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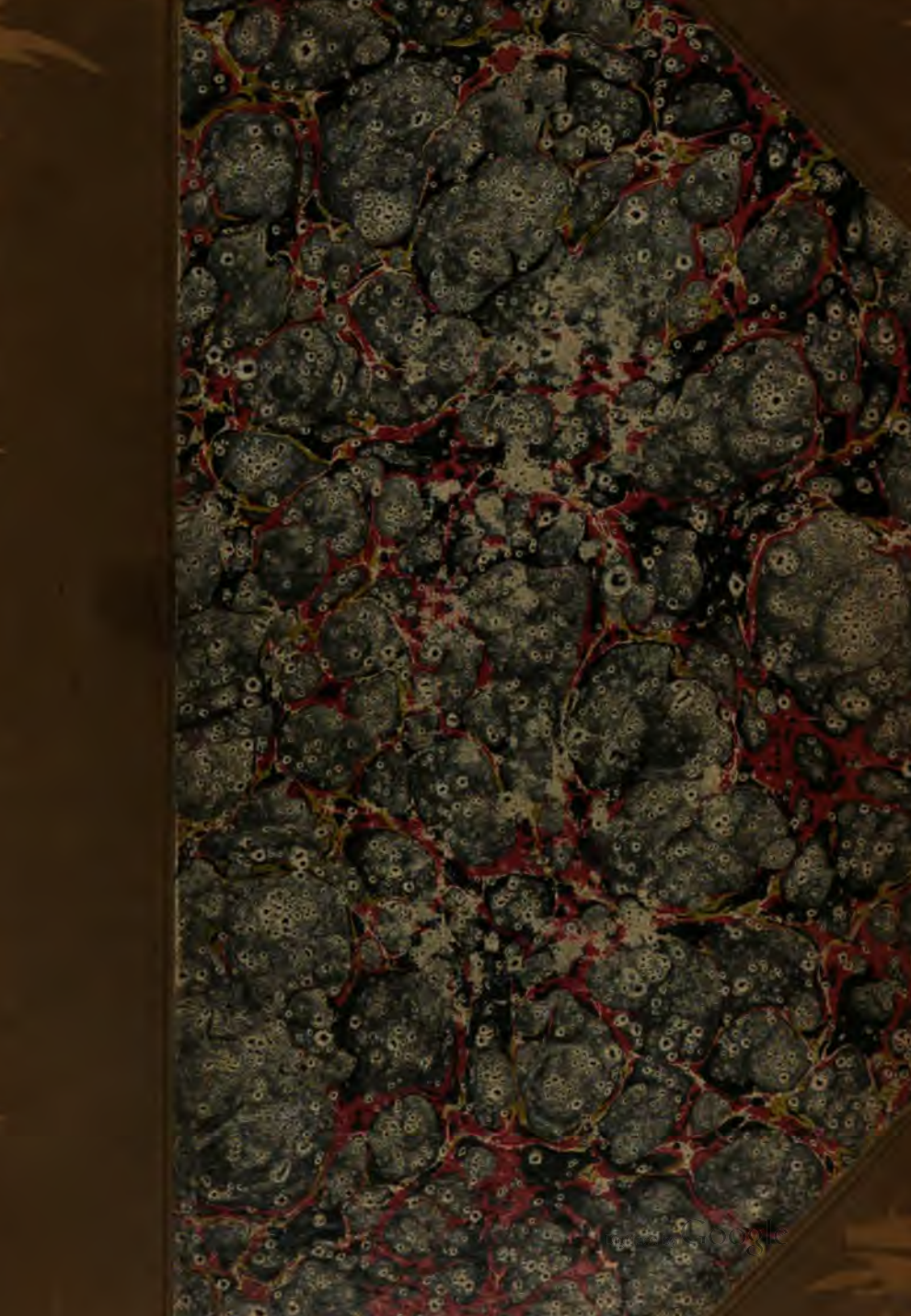

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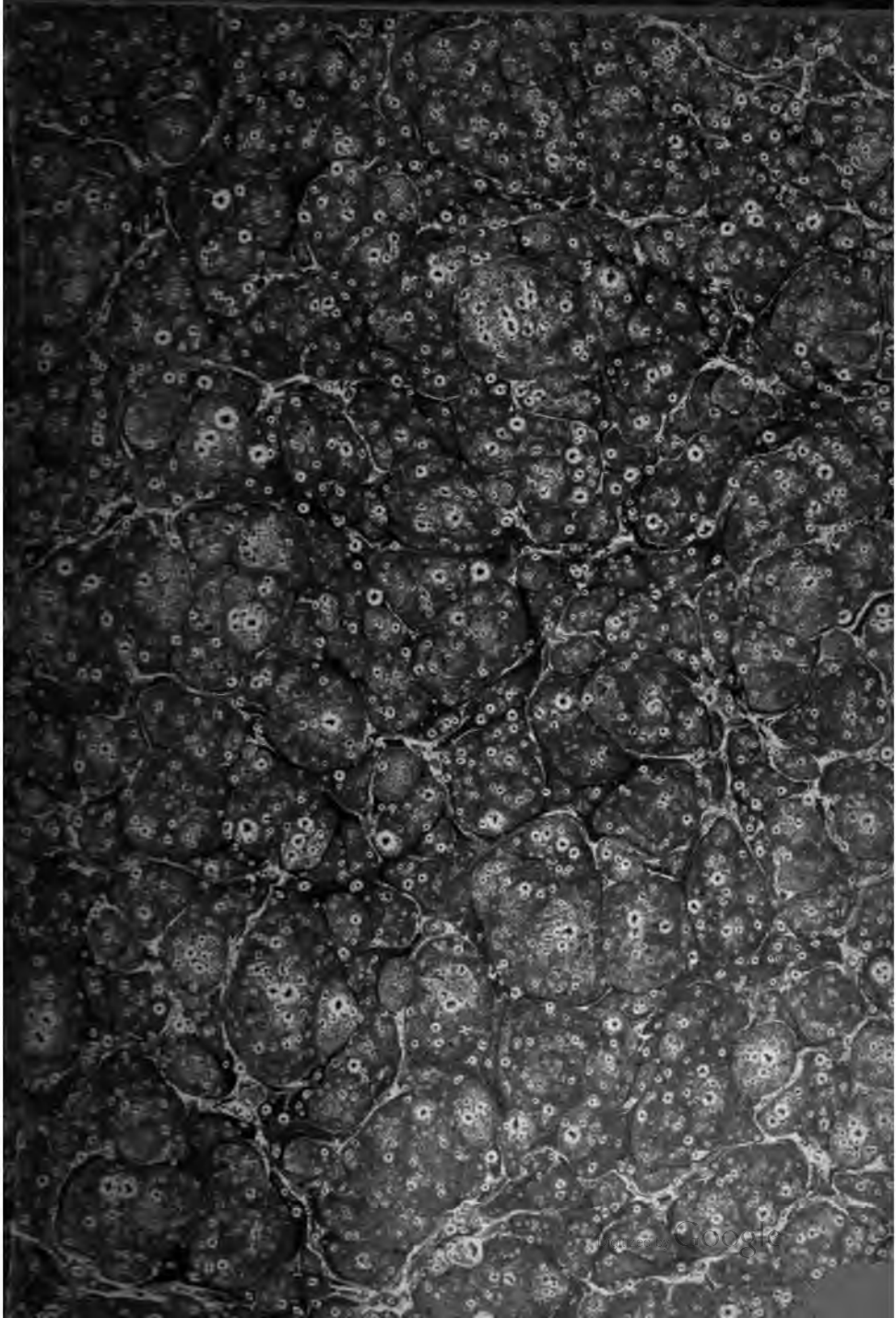

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THE

WORKS

OF

CHARLES SUMNER.

Veniet fortasse aliud tempus, dignius nostro, quo, debellatis odiis, veritas triumphabit. Hoc mecum opta, lector, et vale.

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A REPUBLICAN FORM OF GOVERNMENT OUR FIRST DUTY AND THE ESSENTIAL CONDITION OF PEACE.

BILLS AND RESOLUTIONS IN THE SENATE, AT THE OPENING OF THE SESSION OF CONGRESS, DECEMBER 4, 1865.

THIS session of Congress was occupied by Reconstruction, especially the question of suffrage for the colored race, with differences between Congress and President Johnson, culminating at the next Congress in his impeachment.

Mr. Sumner, on the first day of the session, as soon as he could obtain the floor, introduced the following measures.

A BILL to carry out the principles of a republican form of government in the District of Columbia.

A bill to preserve the right of jury trial, by securing impartial jurors in the courts of the United States.

A bill to prescribe an oath to maintain a republican form of government in the Rebel States.

A bill in part execution of the guaranty of a republican form of government in the Constitution of the United States.

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A bill supplying appropriate legislation to enforce the Amendment to the Constitution prohibiting Slavery.

A bill to enforce the guaranty of a republican form of government in certain States whose governments have been usurped or overthrown.

A joint resolution proposing an Amendment to the Constitution of the United States.

Concurrent resolutions declaring the adoption of the Constitutional Amendment abolishing Slavery.

Resolutions declaring the duties of Congress in respect to guaranties of the National Security and the National Faith in the Rebel States.

Resolutions declaring the duty of Congress, especially in respect to loyal citizens in the Rebel States.

This series of propositions attracted the attention of the country. Expressions of sympathy and gratitude were abundant. Colored fellow-citizens at Philadelphia addressed Mr. Sumner in earnest words.

"PHILADELPHIA, PA., December 6, 1865.

"HON. CHARLES SUMNER: —

"DEAR SIR. — At a large and enthusiastic meeting of the colored citizens of this city, held in the Philadelphia Institute this evening, the undersigned were charged with the duty of conveying to you, in behalf of twenty-five thousand disfranchised Americans here, their most heartfelt gratitude for the noble, fearless, patriotic stand taken by you at the opening of the present Congress. No day of our lives seems brighter than that upon which the foremost champion of Freedom boldly directs the attention of the nation to a series of clear, sound, statesmanlike measures looking to the complete enfranchisement of America.

"We speak but faintly, though truthfully, when we say that four millions of Americans will ever cherish with the warmest gratitude of their hearts,

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and hand down as a precious legacy to their children, the name of Charles Sumner, — Charles Sumner, who has at all times and under all circumstances, even when friends faltered and foes exulted, stood firm, unflinching, immovable, *uncompromising*, on the rock of Justice and Liberty.

"God bless the Christian gentleman and scholar, the ablest of American statesmen! God bless the noble, spotless man, Charles Sumner! is the fervent prayer of four millions of disfranchised Americans, not less than of

Yours, admiringly and sincerely,

"EBENEZER D. BASSETT,[1]
ISAIAH C. WEAR,
NATHANIEL W. DEPEE."

Parker Pillsbury, the devoted Abolitionist, wrote at once from the office of the *Antislavery Standard*, in New York: —

"No need of many words to-day. Your openings yesterday were sublime, — a genuine Apocalypse! God grant it be but the key-note to the grandest oratorio ever performed by less than the morning stars and all the sons of God shouting together!"

Rev. Joshua Leavitt, an editor of the New York *Independent*, and a constant Abolitionist of great practical sense, wrote from New York: —

"We look to you to forbear when necessary, and to dare when the time is right."

William Lloyd Garrison, an honored leader in the long warfare with Slavery, who had just returned from a lecture tour in the West as far as the Mississippi, wrote from Boston: —

"I have found but one opinion, whether the test was made publicly or privately, in regard to that *questio vexata*, Reconstruction, — and that is, that not one of the revolted States should be admitted into the Union without being put under a longer probation. . . . . Thanks for your prompt action and untiring vigilance in this matter, in the series of resolutions presented by you to the Senate."

William E. Walker wrote from Trenton, New Jersey: —

"You have ever been in the foremost rank in guarding and defending the rights of the colored people of this country with a sacred jealousy. I hail with inexpressible joy your manly, bold, and intelligent avowal of their civil and political rights, on the opening of the session of Congress. I feel assured that they will be opposed, and strongly opposed; but God grant to you, and the other fearless champions of Freedom's cause, strength and ability to successfully defeat all opposition!"

[1] Afterwards Minister and Consul General to the Government of Hayti.

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Hon. Theophilus Parsons, the learned Law Professor and law writer, wrote from Cambridge: —

"Congress has hard work before it, — about as hard as Grant had to take Richmond; but I suppose it will be done somehow."

Hon. Charles W. Upham, a scholar and writer, formerly Representative in Congress from the Essex District in Massachusetts, wrote from Salem: —

"Stick to the noble ground you have taken, and let reason and events put the President in harmony with you and the people."

With such voices from the people the great work of the session began.

The bad spirit which belonged to the days of Slavery seemed also to return. The following, to Mr. Sumner from ———, dated "Paymaster General's Office, Washington, December 11, 1865," recalled other days.

"I conceive it to be my duty to impart the following information, in which you may be interested.

"Calling your name yesterday, in conversation with a citizen of this city, he casually remarked that you would probably be killed before the expiration of this session, — that two or three were sworn against you.

"I paid no apparent attention to the remark at the time, nor asked any question with regard to it; but, if I can serve you in the matter any further, I am at your command."

Mr. Sumner did not notice this letter, or follow it with any inquiry. He was accustomed to such reports.

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COLORED SUFFRAGE IN THE DISTRICT OF COLUMBIA.

BILL IN THE SENATE, DECEMBER 4, 1865.

A BILL to carry out the principles of a Republican form of Government in the District of Columbia.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person, in other respects qualified to vote within the District of Columbia, shall be excluded from that right by reason of race or color.

SEC. 2. *And be it further enacted,* That any person whose duty it shall be to receive votes at any election within the District of Columbia, who shall refuse to receive or shall reject the vote of any person entitled to such right under this Act, shall be liable to an action of tort by the person injured, and shall be liable, upon indictment and conviction, if such act was done knowingly, to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both. And where the person injured is of African descent, one half the jury impanelled to try the action or indictment shall be of African descent.

SEC. 3. *And be it further enacted,* That any person who shall molest any person entitled to vote under this

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Act, in the exercise of such right, shall, upon indictment and conviction, be liable to a fine not exceeding three thousand dollars, or to imprisonment for a term not exceeding six months, or to both; and if the person molested was of African descent, one half the jury impanelled to try the indictment shall be of African descent.

This bill was read, passed to a second reading, and ordered to be printed.

December 6th, on motion of Mr. Sumner, it was referred to the Committee on the District of Columbia.

At the formation of the Committee, Mr. Sumner became, for the first time, a member of the Standing Committee on the District of Columbia. According to usage in the Senate, the Standing Committees are formed in a caucus of the predominant political party, acting on the report of a Nominating Committee appointed by the caucus. At the opening of the present session Mr. Sumner was a member of the Nominating Committee. While occupied in arranging the Committee on the District of Columbia, he remarked that his only wish with regard to this Committee was, that it should be so constituted as to report in favor of suffrage without distinction of color in the District. Mr. Sherman, of Ohio, who was a member of the Nominating Committee, said at once, "Then you must go on it." Mr. Sumner replied, that he was much occupied on the Committee on Foreign Relations, of which he was Chairman, but that, if the Nominating Committee chose to assign him this new duty, he could not decline it. He was accordingly placed on this Committee, where he continued until the opening of the session in December, 1872, when, at his own request, founded on ill health, he was excused from all service on committees.

The members of the Committee were Mr. Morrill, of Maine, Chairman, Mr. Wade, of Ohio, Mr. Willey, of West Virginia, Mr. Sumner, Mr. Henderson, of Missouri, Mr. Yates, of Illinois, and Mr. Riddle, of Delaware. At the earliest meeting of the Committee, Mr. Wade's bill to regulate the franchise in the District of Columbia, being first on the calendar, was proceeded with. At once the question arose of a general bill regulating suffrage in the District. To relieve the Committee from this embarrassment, and reach a prompt conclusion on the main question, Mr. Sumner moved, "That the Committee will report a

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bill simply prohibiting any exclusion from the elective franchise on account of color, with proper provisions to carry out this prohibition, and without undertaking to regulate the qualifications." This motion was adopted.

December 20th, Mr. Morrill reported Mr. Wade's bill with amendments, and, in reply to inquiry from Mr. Sumner, said that he was "inclined to call it up at the earliest possible time, but probably not before the contemplated adjournment [for the holidays]." Mr. Sumner then said: —

"I am very glad my excellent friend proposes to proceed with the consideration of that measure at an early day. I believe the country requires promptitude in such act of justice."

January 10, 1866, the Senate, on motion of Mr. Morrill, proceeded with the bill, and adopted several of the amendments. An amendment providing that the elector "shall be able to read the Constitution of the United States in the English language, and write his name," excited discussion, when the bill, on motion of Mr. Yates, was recommitted.

January 12th, Mr. Morrill reported the original bill with an amendment as a substitute. January 16th, it was taken up for consideration, when Mr. Davis, of Kentucky, spoke at length against it. From that date until June 27th it was not resumed, but the Senate during this interval heard suffrage discussed, especially on the Constitutional Amendment concerning representation. At the latter date it was taken up, on motion of Mr. Morrill. In the substitute there was no requirement of reading and writing as a qualification; but Mr. Morrill moved the amendment on this subject which had been reported before. On this important proposition the vote stood, Yeas 15, Nays 19. So it was rejected. After an elaborate speech from Mr. Willey, in which he proposed a qualified suffrage, the bill went over to another day, but was not resumed until the next session of Congress. The pressure of business, the fact that there would be no election until after the next session, the growing sense that the suffrage must be without educational qualification, and the uncertainty of carrying such a bill over the veto of the President, were the reasons for this delay.

Meanwhile, after a debate of several days, the House of Representatives, on the 18th of January, passed a short bill, striking the word "white" from the election laws of the District, and declaring that no person should be disqualified on account of color.

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December 3, 1866, being the first day of the session, Mr. Sumner moved that the Senate proceed with the consideration of the Suffrage Bill, and then remarked: —

"It will be remembered that this bill was introduced on the first day of the last session, — that it was the subject of repeated debate in this Chamber, — that it was more than once referred to the Committee on the District of Columbia, by whose chairman it was reported back to the Senate. At several different stages it was supposed that we were about to reach a final vote. The country expected that vote. It was not had. It ought to have been had. And now, Sir, I think it best for the Senate, in this very first hour of its coming together, to put that bill on its passage. It has been thoroughly debated. Every Senator has made up his mind. There is nothing more to be said on either side. So far as I am concerned, I am perfectly willing that the vote shall be taken without one further word; but I think that the Senate ought not to allow the bill to be postponed. We should seize this first occasion to put the bill on its passage. The country expects it; the country will rejoice and be grateful, if you will signalize this first day of your coming together by this beautiful and generous act."

The Chair, after recognizing the motion, ruled it not in order, according to a former precedent.

December 10th, on motion of Mr. Morrill, the Senate proceeded with the Suffrage Bill. Mr. Sumner joined in urging it: —

"Let us, so far as the Senate can do it, give suffrage to the colored race in the District; let us signalize this first day of actual business by finishing this great act."

Debate ensued for four days, in which Mr. Morrill, Mr. Willey, of West Virginia, Mr. Wilson, of Massachusetts, Mr. Pomeroy, of Kansas, Mr. Anthony, of Rhode Island, Mr. Williams, of Oregon, Mr. Cowan, of Pennsylvania, Mr. Wade, of Ohio, Mr. Yates, of Illinois, Mr. Reverdy Johnson, of Maryland, Mr. Gratz Brown, of Missouri, Mr. Davis, of Kentucky, Mr. Sprague, of Rhode Island, Mr. Buckalew, of Pennsylvania, Mr. Doolittle, of Wisconsin, Mr. Dixon, of Connecticut, Mr. Saulsbury, of Delaware, Mr. Foster, of Connecticut, Mr. Frelinghuysen, of New Jersey, Mr. Hendricks, of Indiana, Mr. Lane, of Indiana, and Mr. Sumner, took part. The remarks of the last will appear in their proper place, according to date.[1] Among the amendments considered was one by Mr. Cowan to strike out the word "male," so as to open suffrage to women, which was rejected, — Yeas 9, Nays 37. The amendment by Mr. Dixon, making reading and writing a qualification, was also rejected, — Yeas 11, Nays 34.

[1] *Post*, Vol. XI. pp. 48 - 51.

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December 13th, the bill passed the Senate, — Yeas 32, Nays 13. The announcement of its passage was followed by applause in the galleries. On the next day the bill passed the other House, — Yeas 128, Nays 46.

January 7, 1867, the bill passed the Senate over the veto of President Johnson, by a two-thirds vote, — Yeas 29, Nays 10. On the next day it passed the other House by a two-thirds vote, — Yeas 113, Nays 38. And so it became a law, and also a model for similar legislation in the reconstruction of the Rebel States.

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IMPARTIAL JURORS FOR COLORED PERSONS.

BILL IN THE SENATE, DECEMBER 4, 1865.

A BILL to preserve the right of trial by jury, by securing impartial jurors in the Courts of the United States.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the courts of the United States in any State, whereof, according to the census Anno Domini eighteen hundred and sixty, one sixth part or more of the population was of African descent, every grand jury shall consist one half of persons of African descent who shall possess the other qualifications now required by law; and when the matter to be tried relates to any injury inflicted by a person of African descent upon a person not of such descent, or *vice versa*, or to any claim, suit, or demand between a person of such descent and one not of such descent, every petit jury shall consist one half of persons of African descent possessing the other qualifications now required by law. Upon any such trial, prejudice against persons of African descent, or against persons not of such descent, shall be ground of challenge, and, being established by proof, to the satisfaction of the judge, shall exclude the juror. And upon any such trial, inability to read or write shall be ground of challenge, and, the fact being found by the judge, shall exclude the juror.

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This bill was read, passed to a second reading, and ordered to be printed.

December 13th, it was read a second time, and, on motion of Mr. Sumner, referred to the Committee on the Judiciary.

Towards the end of the session, July 7, 1866, it was reported adversely by Mr. Trumbull, and, on his motion, indefinitely postponed.

This effort to secure recognition of colored persons on juries was suggested by the ancient jury *de Medietate Linguæ*, first given by the statute of 28th Edward III., cap. 13, and used in cases where one party was a foreigner and the other a denizen. There were other cases where an analogous jury was impanelled, as in a criminal trial in the University courts, where the jury was half freeholders of the county, and half matriculated laymen of the University.[1]

[1] Blackstone, Commentaries, Vol. IV. p. 278.

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OATH TO MAINTAIN A REPUBLICAN FORM OF GOVERNMENT IN THE REBEL STATES.

BILL IN THE SENATE, DECEMBER 4, 1865.

A BILL prescribing an oath to maintain a Republican form of Government in the Rebel States.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter every person in any State lately declared to be in rebellion, before he shall be allowed to vote at any election, State or National, or before he shall enter upon the duties of any office, State or National, or become entitled to the salary or other emoluments thereof, shall take and subscribe an oath or affirmation to maintain a republican form of government, as follows: "I do hereby swear (or affirm) that I will at all times hereafter use my best endeavors to maintain a republican form of government in the State of which I am an inhabitant, and in the Union of the United States; that I will at all times recognize the indissoluble unity of the Republic, and will always discountenance and resist any endeavor to break away or secede from the Union; that I will give my influence and vote at all times to strengthen and sustain the national credit; that I will always discountenance and resist any attempt, directly

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or indirectly, to repudiate or postpone, in any part or in any way, either the debt contracted by the United States in subduing the late Rebellion or the obligation assumed to the Union soldiers; that I will always discountenance and resist any laws making any distinction of race or color; and that in all ways I will strive to maintain a State government completely loyal to the Union, where all men shall enjoy equal protection and equal rights": which, so taken and subscribed, shall be preserved in the proper office or department, according to regulations made by the President of the United States. Any person who shall falsely take such oath shall be guilty of perjury, and, on conviction, in addition to the penalties now prescribed for that offence, shall be deprived of his office, and rendered incapable forever after of holding any office under the United States.

This bill was read, passed to a second reading, and ordered to be printed. The same oath appears in the Scheme of Reconstruction.[1]

[1] *Post*, p. 22.

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PART EXECUTION OF THE GUARANTY OF A REPUBLICAN FORM OF GOVERNMENT.

BILL IN THE SENATE, DECEMBER 4, 1865.

A BILL in part execution of the guaranty of a Republican form of Government in the Constitution of the United States.

WHEREAS it is declared in the Constitution that the United States shall guaranty to every State in this Union a republican form of government; and whereas certain States have allowed their governments to be subverted by rebellion, so that the duty is now cast upon Congress of executing this guaranty: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all States lately declared to be in rebellion there shall be no oligarchy invested with peculiar privileges and powers, and there shall be no denial of rights, civil or political, on account of race or color; but all persons shall be equal before the law, whether in the court-room or at the ballot-box. And this statute, made in pursuance of the Constitution, shall be the supreme law of the land, anything in the Constitution or laws of any such State to the contrary notwithstanding.

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This bill was read, passed to a second reading, and ordered to be printed.

The same bill, in another form, was introduced by Mr. Sumner, February 2, 1866, and afterwards moved as a substitute for the Constitutional Amendment on Representation.[1]

[1] *Post*, pp. 113, 123.

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EQUAL RIGHTS OF COLORED PERSONS TO BE PROTECTED BY THE NATIONAL COURTS.

BILL IN THE SENATE, TO ENFORCE THE CONSTITUTIONAL AMENDMENT ABOLISHING SLAVERY, DECEMBER 4, 1865.

A BILL supplying appropriate legislation to enforce the Amendment to the Constitution prohibiting Slavery.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. *And be it further enacted,* That, if any person shall attempt to control, or shall by act or word claim any right to control, the services of any other person, contrary to the provisions of the foregoing section, the person so offending shall, upon indictment and conviction in the District Court of the United States for the district where the crime was committed, be punished by a fine not exceeding ten thousand dollars, or by imprisonment for a term not exceeding ten years, or by both, to be inflicted at the discretion of the court; and it shall be no defence, nor cause of mitigation of sentence, that

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such claim or attempt is sanctioned by any pretended law of a State, or any judgment of a State court. But nothing herein contained shall be held to impair any other remedy now existing by *Habeas Corpus* or otherwise.

SEC. 3. *And be it further enacted,* That, in further enforcement of the provision of the Constitution prohibiting Slavery, and in order to remove all relics of this wrong from the States where this Constitutional prohibition takes effect, it is hereby declared that all laws or customs in such States, establishing any oligarchical privileges and any distinction of rights on account of race or color, are hereby annulled, and all persons in such States are recognized as equal before the law; and the penalties provided in the last section are hereby made applicable to any violation of this provision, which is made in pursuance of the Constitution of the United States.

SEC. 4. *And be it further enacted,* That, in further enforcement of the provision of the Constitution, the courts of the United States in the States shall have exclusive jurisdiction of all offences committed by persons not of African descent upon persons of African descent; also of all offences committed by persons of African descent; and also of all causes, suits, and demands to which any person of African descent shall be a party; and it is hereby declared that all such cases are to be treated as cases arising under the Constitution of the United States.

This bill was read, passed to a second reading, and ordered to be printed.

December 21st, it was read a second time, and, on motion of Mr. Sumner, referred to the Committee on the Judiciary.

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January 11, 1866, Mr. Trumbull, from this Committee, reported the "Bill to protect all persons in the United States in their civil rights, and furnish the means of their vindication," which was passed, covering in part the ground of Mr. Sumner's bill.[1]

[1] *Post*, p. 271.

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REPRESENTATION ACCORDING TO VOTERS.

JOINT RESOLUTION IN THE SENATE, TO AMEND THE CONSTITUTION, DECEMBER 4, 1865.

JOINT RESOLUTION proposing an Amendment of the Constitution of the United States.

RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled (two thirds of both Houses concurring), That the following Article be proposed to the Legislatures of the several States as an Amendment to the Constitution of the United States, which, when ratified by three fourths of such Legislatures, shall become a part of the Constitution, to wit: —

"Representatives shall be apportioned among the several States which may be included within this Union according to the number of male citizens of the age of twenty-one years having in each State the qualifications requisite for electors of the most numerous branch of the State Legislature. The actual enumeration of such citizens shall be made by the census of the United States."

This was the first resolution of the session. It was read, passed to a second reading, and ordered to be printed.

December 13th, on motion of Mr. Sumner, it was read a second time, and referred to the Committee on the Judiciary.

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June 20, 1866, in company with other resolutions proposing Amendments to the Constitution, it was reported adversely by Mr. Trumbull, and on his motion indefinitely postponed.

Meanwhile the proposition had entered largely into debate, and had been discussed by Mr. Sumner.[1] It was superseded by the provision on Representation in the Fourteenth Amendment of the Constitution. When moved, June 6th, by Mr. Doolittle, of Wisconsin, as a substitute for that clause, it was rejected, — Yeas 7, Nays 31. The yeas were Messrs. Cowan, of Pennsylvania, Davis, of Kentucky, Doolittle, Guthrie, of Kentucky, Hendricks, of Indiana, Johnson, of Maryland, and Riddle, of Delaware. It was no longer satisfactory to Mr. Sumner, who hoped for something better. When brought forward by him, it was in the nature of a tentative process.

[1] *Post*, pp. 315, seqq.

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SCHEME OF RECONSTRUCTION ON THE BASIS OF EQUAL RIGHTS.

BILL IN THE SENATE, TO ENFORCE THE GUARANTY OF A REPUBLICAN FORM OF GOVERNMENT IN CERTAIN STATES, DECEMBER 4, 1865.

A BILL to enforce the guaranty of a Republican form of Government in certain States whose governments have been usurped or overthrown.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the States lately declared in rebellion against the United States, the President shall, by and with the advice and consent of the Senate, appoint for each a provisional governor, with pay and emoluments not exceeding those of a brigadier-general of volunteers, who shall be charged with the civil administration of such State, until a State government therein shall be recognized as hereinafter provided.

SEC. 2. *And be it further enacted*, That the provisional governor of each of such States shall direct the marshal of the United States, as speedily as may be, to name a sufficient number of deputies, and to enroll all male citizens of the United States resident in the State in their respective counties, and to request each one to take the oath to support the Constitution of the United States, and the oath to maintain a republican form of govern-

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ment, and in his enrolment to designate those who take and those who refuse to take the oaths, which rolls shall be forthwith returned to the provisional governor; and if the persons taking the oaths shall amount to a majority of the persons enrolled in the State, he shall by proclamation invite the loyal people of the State to elect delegates to a convention charged to declare the will of the people of the State relative to the reëstablishment of a State government, subject to and in conformity with the Constitution of the United States.

SEC. 3. *And be it further enacted,* That the oath to maintain a republican form of government shall be as follows: "I do hereby swear (or affirm) that I will at all times hereafter use my best endeavors to maintain a republican form of government in the State of which I am an inhabitant, and in the Union of the United States; that I will at all times recognize the indissoluble unity of the Republic, and will always discountenance and resist any endeavor to break away or secede from the Union; that I will give my influence and vote at all times to strengthen and sustain the national credit; that I will always discountenance and resist any attempt, directly or indirectly, to repudiate or postpone, in any part or in any way, either the debt contracted by the United States in subduing the late rebellion or the obligation assumed to the Union soldiers; that I will always discountenance and resist any laws making any distinction of race or color; and that in all ways I will strive to maintain a State government completely loyal to the Union, where all men shall enjoy equal protection and equal rights."[1]

[1] This same oath appears in another bill, introduced by Mr. Sumner on the same day, entitled "A Bill prescribing an oath to maintain a repub-

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SEC. 4. *And be it further enacted,* That the convention shall consist of as many members as both Houses of the last constitutional State Legislature, apportioned by the provisional governor among the counties, parishes, or districts of the State, in proportion to the population returned as electors by the marshal, in compliance with the provisions of this Act. The provisional governor shall by proclamation declare the number of delegates to be elected by each county, parish, or election district; name a day of election, not less than thirty days thereafter; designate the places of voting in each county, parish, or district, conforming, as nearly as may be convenient, to the places used in the State elections next preceding the Rebellion; appoint one or more commissioners to hold the election at each place of voting; and provide an adequate force to keep the peace during the election.

SEC. 5. *And be it further enacted,* That the delegates shall be elected by the loyal male citizens of the United States of the age of twenty-one years, and resident at the time in the county, parish, or district in which they shall offer to vote, and enrolled as aforesaid, or absent in the military service of the United States, and who shall take and subscribe the oath of allegiance to the United States in the form contained in the Act of Congress of July 2, 1862, and the before recited oath to maintain a republican form of government; and all such citizens of the United States who are in the military service of the United States shall vote at the head-quarters of

lican form of government in the Rebel States"; this oath to be taken by every person in any State lately declared to be in rebellion, before he shall be allowed to vote at any election, State or National, or before he shall enter upon the duties of any office, State or National, or become entitled to the salary or other emoluments thereof. See, *ante*, p. 12.

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their respective commands, under such regulations as may be prescribed by the provisional governor for the taking and return of their votes; but no person who has held or exercised any office, civil or military, State or otherwise, under the Rebel usurpation, or who has voluntarily borne arms against the United States, shall vote or be eligible as delegate at such election.

SEC. 6. *And be it further enacted*, That the commissioners, or either of them, shall hold the election in conformity with this Act, and, so far as may be consistent therewith, shall proceed in the manner used in the State prior to the Rebellion. The oath of allegiance and the oath to maintain a republican form of government shall be taken and subscribed on the poll-book by every voter in the form above prescribed; but every person known by or proved to the commissioners to have held or exercised any office, civil or military, State or otherwise, under the Rebel usurpation, or to have voluntarily borne arms against the United States, shall be excluded, though he offer to take the oath; and in case any person who shall have borne arms against the United States shall offer to vote, he shall be deemed to have borne arms voluntarily, unless he shall prove the contrary by the testimony of a qualified voter. The poll-book showing the name and oath of each voter shall be returned to the provisional governor by the commissioners of election, or the one acting, and the provisional governor shall canvass such returns, and declare the person having the highest number of votes elected.

SEC. 7. *And be it further enacted*, That the provisional governor shall by proclamation convene the delegates duly elected, at the capital of the State, on a day not

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more than three months after the election, giving at least thirty days' notice of such day. In case the capital shall in his judgment be unfit, he shall in his proclamation appoint another place. He shall preside over the deliberations of the convention, and administer to each delegate, before taking his seat in the convention, the oath of allegiance to the United States, and the oath to maintain a republican form of government, in the form above prescribed.

SEC. 8. *And be it further enacted*, That the convention shall declare, on behalf of the people of the State, their submission to the Constitution and laws of the United States, and shall adopt the following provisions, hereby prescribed by the United States in the execution of the constitutional duty to guaranty a republican form of government to every State, and incorporate them in the Constitution of the State, that is to say:—

First. No person who has held or exercised any office, civil or military, except offices merely ministerial and military offices below the grade of colonel, State or otherwise, under the usurping power, shall vote for or be a member of the legislature or governor.

Secondly. Involuntary servitude is forever prohibited, and the freedom of all persons is guarantied in such State.

Thirdly. No debt, State or otherwise, created by or under the sanction of the usurping power, shall be recognized or paid by the State.

Fourthly. No person shall enter upon any office within the gift of the people of this State, until he has first taken the oath to support the Constitution of the United States and the oath to maintain a republican form of government. And the Constitution shall prescribe forms

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for these oaths substantially in accordance with the forms herein provided.

Fifthly. There shall be no distinction among the inhabitants of this State founded on race, former condition, or color. Every such inhabitant shall be entitled to all the privileges before the law enjoyed by the most favored class of such inhabitants.

Sixthly. These provisions shall be perpetual, not to be abolished or changed hereafter.

SEC. 9. *And be it further enacted,* That, when the convention shall have adopted those provisions, it shall proceed to reëstablish a republican form of government, and ordain a constitution containing those provisions, which, when adopted, the convention shall by ordinance provide for submitting to the people of the State entitled to vote under this law, at an election to be held in the manner prescribed by the act for the election of delegates, but at a time and place named by the convention, at which election the electors described above, and none others, shall vote directly for or against such constitution and form of State government. And the returns of such election shall be made to the provisional governor, who shall canvass the same in the presence of the electors, and if a majority of the votes cast shall be for the constitution and form of government, he shall certify the same, with a copy thereof, to the President of the United States, who, after obtaining the assent of Congress, shall by proclamation recognize the government so established, and none other, as the constitutional government of the State; and from the date of such recognition, and after its legislature shall have ratified the Amendment to the United States Constitution abolishing slavery and prohibiting involuntary servi-

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tude, and not before, Senators and Representatives, and Electors for President and Vice-President, may be elected in such State, according to the laws of the State and of the United States.

SEC. 10. *And be it further enacted,* That, if the convention shall refuse to reëstablish the State government on the foregoing conditions, the provisional governor shall declare it dissolved; but it shall be the duty of the President, whenever he shall have reason to believe that a sufficient number of the people of the State entitled to vote under this Act, in number not less than a majority of those enrolled as aforesaid, are willing to reëstablish a State government on the foregoing conditions, to direct the provisional governor to order another election of delegates to a convention for the purpose and in the manner prescribed in this Act, and to proceed in all respects as herein before provided, either to dissolve the convention, or to certify the State government reëstablished by it to the President.

SEC. 11. *And be it further enacted,* That, until the United States shall have recognized a republican form of State government; the provisional governor in each of such States shall see that this Act, and the laws of the United States, and the laws of the State in force when the State government was overthrown by the Rebellion, are faithfully executed within the State; but no law or usage contrary to any of the provisions herein directed to be inserted in the constitution of the State shall be recognized or enforced by any court or officer in such State, and such provisions shall be regarded as already incorporated into the law of the State; and the laws for the trial and punishment of white persons shall extend to all per-

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sons, and jurors shall have the qualifications of voters under this law for delegates to the convention. The President shall appoint such officers, provided for by the laws of the State when its government was overthrown, as he may find necessary to the civil administration of the State, all which officers shall be entitled to receive the fees and emoluments provided by the State laws for such officers. And he may permit, when he deems it expedient, elections to be made of such officers by the people entitled to vote according to the provisions of this Act; such officers to have the qualifications required for voters under this Act, and to hold their offices subject to removal by him. And all such officers, whether appointed by the President or elected by the people, shall, before entering on the duties of their offices, take the oaths to support the Constitution of the United States, and to maintain a republican form of government.

SEC. 12. *And be it further enacted*, That, until the recognition of a State government as aforesaid, the provisional governor shall, under such regulations as he may prescribe, cause to be assessed, levied, and collected, for the year eighteen hundred and sixty-four, and every year thereafter, the taxes provided by the laws of such State to be levied during the fiscal year preceding the overthrow of the State government thereof, in the manner prescribed by the laws of the State, as nearly as may be; and the officers appointed as aforesaid are vested with all powers of levying and collecting such taxes, by distress or sale, as were vested in any officers or tribunal of the State government for those purposes. The proceeds of such taxes shall be accounted for to the provisional governor, and be by him applied to

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the expenses of the administration of the laws in such State, subject to the direction of the President; and the surplus shall be deposited in the treasury of the United States to the credit of such State, to be paid to the State upon an appropriation therefor, to be made when a republican form of government shall be recognized therein by the United States.

This was read, passed to a second reading, and ordered to be printed.

December 21st, it was, on motion of Mr. Sumner, referred to the Joint Committee "to inquire into the condition of the States which formed the so-called Confederate States of America," known as the Reconstruction Committee, of which Mr. Fessenden was Senate Chairman, and Mr. Stevens House Chairman.

Nothing as systematic and complete as this measure was ever adopted. The work of Reconstruction was piecemeal.

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ADOPTION OF THE CONSTITUTIONAL AMENDMENT ABOLISHING SLAVERY.

CONCURRENT RESOLUTIONS IN THE SENATE, DECLARING THE ADOPTION, DECEMBER 4, 1865.

CONCURRENT RESOLUTIONS declaring the adoption of the Constitutional Amendment abolishing Slavery.

WHEREAS Congress, by a vote of two thirds of both Houses, did heretofore propose to the Legislatures of the several States for ratification an Amendment to the Constitution in the following words, to wit: —

"ARTICLE XIII. *Section* 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"*Section* 2. Congress shall have power to enforce this Article by appropriate legislation."

And whereas, at the time when such Amendment was submitted, as well as since, there were sundry States which, by reason of rebellion, were without Legislatures, so that, while the submission was made in due constitutional form to "the Legislatures of the several States," in obedience both to the letter and spirit of the provision of the Constitution authorizing Amendments, it was

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not, as it could not be, made to all the States, there being a less number of Legislatures of States than there were States;

And whereas, since the Constitution expressly authorizes Amendments to be made, any construction which would render the making of them at times impossible must violate both its letter and its spirit;

And whereas, to require the ratification by States without Legislatures as well as by "the Legislatures of the States," in order to be valid, would put it in the power of long-continued rebellion to suspend not only the peace of the nation, but its Constitution also;

And whereas the count of States in rebellion enables such States by silence to vote against the Constitutional Amendment, thus giving to their silence the same effect as a vote;

And whereas, from the terms of the Constitution and the nature of the case, it belongs to the two Houses of Congress to determine when such ratification is complete;

And whereas more than three fourths of the Legislatures to which the proposition was made have ratified such Amendment: Now, therefore,

Be it resolved by the Senate (the House of Representatives concurring), That the Amendment abolishing Slavery has become and is part of the Constitution of the United States.

Resolved, That, notwithstanding the foregoing resolution, yet, considering the great public interest which attaches to this question, the Legislatures which have not ratified the Amendment be permitted to express their concurrence by the usual form of ratification, to be returned in the usual manner.

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Resolved, That no one of the States, to the Legislatures of which such Amendment could not be submitted, by reason of rebellion against the United States and having no Legislatures, be permitted to resume its relations, and have its Legislature acknowledged and its Senators and Representatives admitted, until its Legislature has first ratified such Amendment in recognition of the accomplished fact.

These resolutions were read and ordered to be printed. They were also entered at length on the Journal of the Senate.

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FIVE CONDITIONS OF RECONSTRUCTION.

RESOLUTIONS IN RESPECT TO GUARANTIES OF THE NATIONAL SECURITY AND THE NATIONAL FAITH, DECEMBER 4, 1865.

RESOLUTIONS declaring the duty of Congress in respect to guaranties of the national security and the national faith in the Rebel States.

RESOLVED, That in order to provide proper guaranties for security in the future, so that peace and prosperity shall surely prevail, and the plighted faith of the nation be preserved, it is the first duty of Congress to take care that no State declared in rebellion shall be allowed to resume its relations with the Union until after satisfactory performance of five several conditions, which conditions precedent must be submitted to a popular vote, and be sanctioned by a majority of the people of each State respectively, as follows.

1. The complete reëstablishment of loyalty, as shown by honest recognition of the unity of the Republic, and the duty of allegiance to it at all times, without mental reservation or equivocation of any kind.

2. The complete suppression of all oligarchical pretensions, and the complete enfranchisement of all citizens, so that there shall be no denial of rights on account of race or color, but justice shall be impartial, and all shall be equal before the law.

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3. The rejection of the Rebel debt, and at the same time the adoption, in just proportion, of the national debt and the national obligations to Union soldiers, with solemn pledges never to join in any measure, direct or indirect, for their repudiation, or in any way tending to impair the national credit.

4. The organization of an educational system for the equal benefit of all, without distinction of race or color.

5. The choice of citizens for office, whether State or National, of constant and undoubted loyalty, whose conduct and conversation shall give assurance of peace and reconciliation.

Resolved, That to provide these essential safeguards, without which the national security and the national faith will be imperilled, States cannot be precipitated back to political power and independence; but they must wait until these conditions are in all respects fulfilled.

These resolutions were read and ordered to be printed. They were also entered at length on the Journal of the Senate.

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RIGHTS OF LOYAL CITIZENS, AND A REPUBLICAN GOVERNMENT.

RESOLUTIONS IN THE SENATE, DECLARING THE DUTY OF CONGRESS, DECEMBER 4, 1865.

RESOLUTIONS declaring the duty of Congress, especially towards loyal citizens in the Rebel States.

WHEREAS it is provided by the Constitution that "the United States shall guaranty to every State in this Union a republican form of government";

And whereas there are certain States where, by reason of rebellion, no State governments are recognized by Congress;

And whereas, because of the failure of such States respectively to maintain State governments, it has become the duty of Congress, standing in the place of guarantor, where the principal has made a lapse, to provide governments republican in form for such States respectively: Now, therefore, in order to declare the duty of Congress, —

1. *Resolved*, That, whenever a convention is called in any such State for the organization of a government, the following persons have a right to be represented therein, namely: the citizens of the State who have taken no part in the Rebellion, especially all those whose exclusion from the ballot enabled others to carry the State into the Rebellion, and still more especially

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those who became soldiers in the armies of the Union, and by valor on the battle-field helped turn the tide of war, making the Union triumphant; and Congress must refuse to sanction the proceedings of any convention composed of delegates chosen by men recently in arms against the Union, and excluding men who perilled life in its defence, unless its proceedings have been first approved by those entitled to participate therein, as hereby declared.

2. *Resolved*, That the Constitution of the United States, being supreme over State laws and State constitutions on those matters upon which it speaks, and the duty being now imposed by it on Congress to legislate for the establishment of government in the States where government is overthrown, it is hereby declared that no supposed State law or State constitution can be set up as an impediment to the national power in the discharge of its duty.

3. *Resolved*, That, since also it has become the duty of Congress to determine what is a republican form of government, it is hereby declared that no government of a State recently in rebellion can be accepted as republican, where large masses of citizens always loyal to the United States are excluded from the elective franchise, and especially where wounded soldiers of the Union, with kindred and race, and also the kindred of others whose bones whiten battle-fields on which they died for country, are thrust from the polls to make place for the men by whose hands came wounds and death; more particularly where, as in some of those States, the result would be to disfranchise the majority of citizens always loyal, and give to the oligarchical minority recently engaged in rebellion power to op-

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press the loyal majority, even to the extent of driving them from home, and depriving them of all opportunity of livelihood.

4. *Resolved*, That, where, by reason of rebellion, there is a lapse in the State government, and it becomes the duty of Congress to provide a government, none can be accepted as "a republican form of government," where numerous native-born citizens, charged with no crime and no failure of duty, and compelled to pay taxes, are left wholly unrepresented; and especially where a particular race is singled out and denied representation, although compelled to pay taxes; more especially where such race constitutes the majority of the citizens, and the enfranchised minority has for the time forfeited its rights by rebellion; and more especially still, where by such exclusion the oligarchical enemies of the Republic can practically compel it to break faith with national soldiers and national creditors, to whose generosity it was indebted during a period of peril.

These resolutions were read and ordered to be printed. They were also entered at length on the Journal of the Senate.

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THE LATE SENATOR COLLAMER.

SPEECH IN THE SENATE, ON HIS DEATH, DECEMBER 14, 1865.

MR. PRESIDENT, — Since Henry Clay left this Chamber by the gate of death, no Senator has passed that way crowned with the same honorable years as Mr. Collamer; nor has any Senator passed that way whose departure created such a blank in the public councils, unless we except Mr. Douglas. He was our most venerable associate; but his place here had not shrunk with time. Nor was he, when we last saw him, less important to our debates and to our conclusions than ever before. He still possessed all those peculiar powers of argument and illustration, seasoned with a New England salt, which he had from the beginning. He was not so old that he was not often the life of the body.

When he came into the Senate, it was after long and various experience as lawyer, judge, representative in the other House, member of the Cabinet, and then again as judge, in all which characters he had been single, pure, honest, faithful, and laborious. Though little of a traveller, he had seen much. He had also read much, and he had done much. But all the results of observation, study, and action had so passed into his nature as to become part of himself. If he expressed an opinion, even on law, it seemed to come from himself, and not

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from books. He was the authority. And yet he was fond of books, whether in his own profession or in other departments of study.

His fidelity assumed the form of accuracy in all that he said or did. He spoke accurately, and he was especially accurate with his pen. Perhaps nobody was apter in the style or language of legislation. He was an expert draughtsman, although, without doubt, too professional for a taste not exclusively professional, — indulging in traditional phrases, and those favorite superfluities of the lawyer, "said" and "aforesaid." The great Act of July 13, 1861,[1] which gave to the war for the suppression of the Rebellion its first Congressional sanction, and invested the President with new powers, was drawn by him. It was he that set in place the great ban, not yet lifted, by which the Rebel States were shut out from the communion of the Union. This is a landmark in our history, and it might properly be known by the name of its author, as "Collamer's statute."

All who ever sat with him in the committee-room will long remember the carefulness with which he gave his counsels, and the completeness with which he explained them. Perhaps his wisdom and facility in business were nowhere more manifest. I seize this occasion to confess most gratefully my own personal obligations to him in this interesting relation.

The same character which appeared in the committee-room showed itself in conversation, enlivened by constant humor. He, too, had his "little story" for illustration; but in this respect he differed from the late President as one of his own Vermont mountains differs from an outstretched laughing prairie of the West. In

[1] Statutes at Large, Vol. XII. pp. 255–258.

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manner he was Socratic. The curious observer, fond of tracing resemblances, might fancy that in the form of his head, and even of his person, he was not unlike the received image of Socrates, while his colloquial powers might again recall Socrates, as pictured by the affectionate Xenophon, "handling all who conversed with him just as he pleased." He had also the same antique simplicity, and I doubt not he would have followed the wise man of Athens barefoot in the waters of the Ilissus. I would not push the resemblance too far, and I use it only for illustration, not for parallel; and yet, as I bring to mind our departed friend, he seems to assume this classical figure. Call him, then, if you please, the Green Mountain Socrates.

Debate, except on the highest occasions, is only conversation in public. With him it was conversation always. He spoke as he conversed, with the same pith and humor, and with the same facility. But his facility did not tempt him. In this gilded amphitheatre,[1] where the speaker is sacrificed to the galleries, as of old the gladiator was offered up to make a Roman holiday, he declined all display, and simply conversed; and such was the desire to hear him, that we gathered near to catch his words. He was not a frequent speaker, and he never spoke except when he had something to say; nor did he speak for effect abroad, but only for effect in the debate. Of course, he was too honest and too considerate of the Senate to speak without the preparation of reflection and study. Though at times earnest, he was never bitter. He never dropped into the debate any poisoned ingredients.

Sometimes he spoke with much effect, especially on

[1] The Senate Chamber.

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law, or finance, or business. On the great question which for a generation overshadowed all others, and finally wrapped the country in the "living cloud of war," he was sincerely antislavery, but with certain shortcomings which in this impartial tribute ought not to be concealed. His lenity toward our monster enemy showed itself unconsciously when he spoke of malignant Rebels as "those Southern gentlemen who had seceded," and then again, when, at an earlier date, he spoke of "two civilizations"; but he bore kindly the reply, that civilization was only on one side. And yet on two occasions in this Chamber he strove for the Right very bravely, so that his position became historic. One of these was many years ago, shortly after he came into the Senate; the other was only last year. The historian and the biographer will describe these scenes. One of them is the fit subject of Art.

The earliest of these occasions was when, under the influence of the President of that day, backed by Jefferson Davis in the Cabinet, an illegal government was set up in a distant Territory, which, in defiance of the people there, proceeded to institute an infamous Black Code borrowed from Slavery. The President countenanced the illegal government, and smiled upon the Black Code. The representatives of Slavery in both Houses of Congress, with their Northern allies, indifferent to human rights, and greedy only of political power, sustained the President in his disregard of a fundamental principle of the Declaration of Independence, that governments derive "their just powers from the consent of the governed." The contest was unequal. On one side was a struggling people, insulted and despoiled of their rights; on the other side was the President, with all the vast

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powers of the Republic, with patronage less than now, but very prevailing, and with a great political party yielding an unhesitating support. The contest reached this Chamber. Naturally it came before the Committee on Territories, where happily the good cause was represented by Jacob Collamer, of Vermont. The interest increased with each day; and when the Committee reported, a scene ensued without example among us.

The reports of committees are usually handed in and ordered to be printed; but now, at the impassioned call of a Senator from South Carolina,[1] the report of the Committee, whitewashing incredible outrages, was read by the Chairman at the desk of the Secretary of the Senate. The Chairman left his seat for this purpose, and stood face to face with the Senate.[2] For two hours the apology for that usurpation which had fastened a Black Code upon an inoffensive people sounded in this Chamber, while the partisans of Slavery gloated over the seeming triumph. There was a hush of silence, and there was sadness also with some, who saw clearly the unpardonable turpitude of the sacrifice. Mr. Collamer followed with a minority report, signed by himself alone, which he read at the desk of the Secretary, standing face to face with the Senate. Jesse D. Bright was at the time our President, but he had installed in the chair on that momentous occasion none other than that most determined artificer of treason and drill-sergeant of the Rebellion, John Slidell, who sat behind, like Mephistopheles looking over the shoulder of Truth,[3] while the

[1] Mr. Butler.

[2] Congressional Globe, 34th Cong. 1st Sess., p. 640, March 12, 1856.

[3] See the engraving of Retzsch.

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patriot Senator, standing before, gravely unfolded the enormities that had been perpetrated. Few then present now remain; but none then present can fail to recall the scene. The report which Mr. Collamer read belongs to the history of the country. But the scene comes clearly within the domain of Art. In the long life of our departed friend it was his brightest and most glorious moment, — beyond anything of honor or power, whether in the cabinet or on the bench. For what is office, compared to the priceless opportunity, nobly employed, of standing as a buttress for human rights?

The other signal occasion, when he showed much of the same character, and was surely inspired by the same sentiment, was during the last year, when the illustrious President, who now reposes in immortality, undertook, in disregard of Congress, and solely by executive power, to institute civil governments throughout that region of the Union where civil governments had been overthrown, — imitating, in the agencies he employed, the Cromwellian system of ruling by "major-generals." The case of distant and oppressed Kansas was revived. Who can forget the awakened leonine energy of the aged Senator, when, contrary to his custom, he interrupted another in debate to declare his judgment against the power of the President to institute permanent civil governments "to last beyond the war"?[1] The dividing line was clear. The President might exercise a temporary military power, but Congress must lay the foundations of permanent peace. This simple principle was, of course, only the corollary of that rule of Jefferson, which has become one of the commonplaces of our political system,

[1] *Ante*, Vol. IX. p. 15: Speech of Mr. Sumner on the Recognition of Arkansas, June 18, 1864.

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asserting "the supremacy of the civil over the military authority."[1] The eggs of crocodiles can produce only crocodiles; and it is not easy to see how eggs laid by military power can be hatched into an American State.

This interjected judgment was afterward developed in a speech, which for sententious wisdom and solid sense is, perhaps, the best he ever delivered. It is not long, but, like the Roman sword, it is effective from its very shortness. He spoke with the authority of years, but he spoke also with another peculiar authority; for it was he who drew the Act of Congress which placed the Rebel States under the ban.[2] Positively, earnestly, and most persuasively, he insisted that Congress should not abdicate its control of this question. His conclusion was repeated again and again. It was for Congress, he said, to say when that state of things existed which would entitle the Rebel States to perform their functions as integral parts of the Union. It was for Congress to decide this question, and not for the President, except so far as the President unites in an Act of Congress by his signature. And he asked, "When will and when ought Congress to admit these States as being in their normal condition?" To which he answers: "It is not enough that they stop their hostility and are repentant. They should present fruits meet for repentance. They should furnish to us, by their actions, some evidence that the condition of loyalty and obedience is their true condition again, and Congress must pass upon it; *otherwise we have no securities*. . . . . And I insist that the President, making peace with them, if you please, by surceasing military operations, *does not alter*

[1] First Inaugural Address, March 4, 1801: Writings, Vol. VIII. p. 4.
[2] Act of July 13, 1861: Statutes at Large, Vol. XII. pp. 255–258.

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their status, until Congress passes upon it." Then, again, filled with the thought, he exclaims, "The great and essential thing now to insist upon is, that Congress shall do nothing which can in any way create *a doubt* about our power over the subject." And still pleading against executive interference, he says: "I believe, that, when reëstablishing the condition of peace with that people, Congress, representing the United States, has power, in ending this war, as any other war, to get some security for the future. It would be a strange thing, if it were not true that this nation, in ending a civil as well as a foreign war, could close it and make peace by obtaining, if not indemnity for the past, *at least some security for future peace.*"[1] This was among the last utterances of our patriot Senator. It is his dying legacy to his country. Let all, from President to citizen, heed its words. The aspiration so often expressed to-day, that he were now alive to take part in the restoration of the Rebel States, is fulfilled. He lives in his declared opinions, echoed from the tomb.

Say not that I err, because here at his funeral, seeking to do him honor, I exhibit him bravely standing front to front with executive power wielded by a President instigated by Jefferson Davis, and then again bravely standing front to front with executive power wielded by the gentle hand of Abraham Lincoln. In the first case it was to save an outraged people; in the other it was to vindicate the powers of the people of the United States in Congress assembled to provide guaranties and safeguards against the wickedness and perjury which had deluged his beloved country with blood. Say not that I err, because now, at his funeral, anxious that

[1] Congressional Globe, 38th Cong. 2d Sess., February 4, 1865, p. 591.

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his best actions should not be forgotten, I commemorate this championship. He is dead, but the good he has done cannot die. And hereafter faithful Senators, struggling with executive power, will catch a new inspiration from his example. A bishop of the Church tells us that "all is not over, while there is a man left to reprove error and bear testimony to the truth; and a man who does it with becoming spirit may stop a prince or senate when in full career, and recover the day."[1] Where this spirit has been shown, where an honored associate has earned this title to fame, I insist that it shall be made known.

[1] Horne, Commentary on the Psalms: Ps. xi. 3.

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"WHITEWASHING" BY THE PRESIDENT.

REMARKS IN THE SENATE, ON A MESSAGE OF PRESIDENT JOHNSON ON THE CONDITION OF THE SOUTHERN STATES, DECEMBER 19, 1865.

DECEMBER 19th, a message was read from President Johnson with regard to the condition of the Southern States, which was represented as "more promising than, in view of all the circumstances, could well have been expected." The President said: —

"From all the information in my possession, and from that which I have recently derived from the most reliable authority, I am induced to cherish the belief that sectional animosity is surely and rapidly merging itself into a spirit of nationality, and that representation, connected with a properly adjusted system of taxation, will result in a harmonious restoration of the relations of the States to the National Union."

Accompanying the message was a report to the President by Lieutenant-General Grant, who had recently made a tour of inspection through several of the States lately in rebellion, where he said, "I am satisfied that the mass of thinking men of the South accept the present situation of affairs in good faith." In this spirit the report speaks of the "universal acquiescence in the authority of the General Government"; it declares that "the good of the country and economy require that the force kept in the interior, where there are many freedmen, should all be white troops,"—that "the presence of black troops, lately slaves, demoralizes labor, both by their advice and by furnishing in their camps a resort for the freedmen for long distances around,"—that "the citizens of the Southern States are anxious to return to self-government within the Union as soon as possible"; and it adds, that "they are in earnest in wishing to do what they think is required by the Government, not humiliating to them as citizens."

Nothing was said in the message or the report of the condition of the freedmen, or of the continued denial of their rights.

Both these documents were read at length by the Secretary of the Senate. A report by Major-General Carl Schurz was also communi-

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cated; but this was not read. It was understood that this report was elaborate, and that it set forth the condition of the freedmen. Mr. Sumner, ascertaining that it accompanied the message, said: "If it is there, I think it had better be read."

SEVERAL SENATORS. It is very long.

MR. SUMNER. At any rate, we can begin it.

THE PRESIDENT *pro tempore*. The reading of the report of General Carl Schurz is called for. It will be read, if there be no objection.

MR. JOHNSON [of Maryland]. I have no objection to the reading of the report; I should like to hear it; but the reading will take a good while, and it can all be printed in a day or two.

MR. SUMNER. Let the reading be begun.

MR. JOHNSON. I submit to the Senator from Massachusetts that the printing of it, perhaps, will answer every purpose. It is a very long report, I see; at least, it seems to be so. I have, personally, not the slightest objection to its being read.

MR. SUMNER. It is a very important document. The Senate will remember, that, when the report was made on the condition of Kansas, every word of it was read at the desk.[1] Now the question before the country is immeasurably more important than that of Kansas. We have a message from the President which is like the whitewashing message of Franklin Pierce with regard to the enormities in Kansas. Such is its parallel. I think the Senate had better at least listen to the opening of Major-General Schurz's report.

MR. JOHNSON. I have no objection, if the Senate think they have time to listen to it; but I did not expect to hear any assault, direct or indirect, upon the President at this time.

MR. SUMNER. No assault at all.

Mr. Johnson then said: "I have seen nothing in the message which would warrant a reflection that any improper purpose had actuated the President in sending it here. He does not mean, as I suppose, to whitewash anybody who has offended."

The Secretary proceeded to read the introductory paragraphs of General Schurz's report, in which he states through what portion of

[1] See, *ante*, p 42.

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the South he travelled, the points at which he stopped, his facilities for obtaining information, and the order in which the results of his observation would be detailed.

Mr. Sherman, of Ohio, "would much prefer to read this document in print," and he moved to dispense with its further reading.

Mr. Sumner replied :—

I SHALL not object, if the Senator from Ohio thinks it proper, on this important occasion, to dispense with the reading. In my judgment the Senate cannot listen to anything of more consequence than this accurate, authentic, most authoritative report with regard to the actual condition of things in the States lately in rebellion. Here is an eminent citizen, lately a major-general in the army of the United States, sent by the President on a special mission to visit those States and to report upon their condition. The visit has been made, — not a hasty one, like that of General Grant, for instance, or of other officers or citizens, but a sojourn occupying time, extending through different States, — and the results are recorded in a careful document. Now, Sir, if the question were trivial, if it were transitory, I should think the Senator was right; but, if he persists in his motion, I shall not oppose it.

Mr. Sherman insisted upon his motion, and said : "It is unusual to read documents in this way." Mr. Doolittle, of Wisconsin, called attention to a remark of Mr. Sumner, which he thought he ought "to qualify at least, if not altogether retract." The objectionable remark was then stated. "Speaking of the message just received from the President of the United States, he said that it was like the whitewashing message of Franklin Pierce, to cover up the transactions in Kansas. . . . . Now, Mr. President, I think the Senator from Massachusetts must have let fall that expression without due consideration"; and he concluded by saying: "I believe, Sir, certainly I think I ought to believe, that the honorable Senator from Massachusetts will at least modify or qualify, if he does not wholly retract, this strong expression."

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Mr. Sumner followed: —

MR. PRESIDENT, — I have nothing to retract, nothing to modify, nothing to qualify. In former days there was one Kansas suffering under illegal power; there are now eleven Kansases suffering as that one; therefore, as eleven is more than one, so is the enormity of the present time more than the enormity in the day of Franklin Pierce.

Mr. Dixon, of Connecticut, said: "A charge has been directly made here by the Senator that the President has sent in a whitewashing report. . . . . When such a charge as that is brought in the Senate, I think it calls for some notice, and I take the liberty, with all my respect for the Senator from Massachusetts, to deny that there is anything in that report of a whitewashing character." Mr. Doolittle spoke again: "I was not pained because the honorable Senator differed from the President; I knew he differed from the President on this question; but I was pained, and I confess very much disappointed, to hear that Senator, as I should be to hear any other Senator on the floor of the Senate, question the truth, the integrity, or the patriotism of the President, however much he might disagree with me in opinion."

Mr. Sumner spoke again: —

MR. PRESIDENT, — I am sorry that I have given pain to honorable friends. I certainly did not intend it. They suggest that a question has been raised as to the policy of the President. I have raised no such question, and have expressed no opinion in regard to it. The Senator from Wisconsin dwells on that point, and reminds the Senate that the policy of the President was not in question. I knew it was not in question, and therefore I expressed no opinion upon it; for, when I speak here, I try to speak directly to the question. There was then no question on the policy of the President. Had there been, I should have been ready to meet it. At the proper time I shall meet it fully, plainly, unequivocally, I trust, as becomes a member of this body.

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The only question, then, was on the character of the document just read; and that I exhibited, compendiously, as whitewashing; and then my honorable friends rise, one after the other, and, like two lexicographers, proceed with a definition of "whitewash." I do not accept their definition. I intended no such thing as either the Senator from Connecticut or the Senator from Wisconsin attempted to impute. I have no reflection to make on the patriotism or the truth of the President. Never, in public or in private, have I made any such reflection, and I do not begin now. When I spoke, it was of the document read at the desk. I characterized it as I thought I ought.

My memory goes back in this Chamber further than that of many about me. I remember that other scene, when a whitewashing message came from Franklin Pierce. We all at that time called it whitewashing; and I am not aware that any one, even on the other side, undertook to play the part that my honorable friends from Wisconsin and Connecticut undertake to perform. The message was so called because we all felt that it was whitewashing; and I undertook at once, to-day, on listening to the document read at the desk, to characterize it precisely as the patriotic party of 1856 characterized the message of Franklin Pierce.

Mr. Dixon added, that, if Mr. Sumner had said that he did not intend his remarks in an offensive tone, but considered "whitewashing" a polite and proper word to apply to the message of the President, he should have accepted his explanation. Mr. Trumbull expressed a hope "that this unprofitable debate might cease." Mr. Fessenden remarked: "This is a mere matter of definitions, and it ought to be referred to some maker of dictionaries."

The motion of Mr. Sherman prevailed without a division, and the message and accompanying documents were ordered to be printed.

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The report of General Schurz was a remarkable document, founded on an official visit, at the appointment of President Johnson, and with its accompanying papers occupied more than a hundred pages.[1] It bristled with testimony, not only from his own observation, but from that of generals and other officers on the spot. "An utter absence of national feeling"; "an entire absence of that national spirit which forms the basis of true loyalty and patriotism"; "although the freedman is no longer considered the property of the individual master, he is considered the slave of society," with the notion "that the elevation of the blacks will be the degradation of the whites"; "the practice of corporal punishment is still continued to a great extent"; "the habit is so inveterate with a great many persons as to render, on the least provocation, the impulse to whip a negro almost irresistible"; "the maiming and killing of colored men seems to be looked upon by many as one of those venial offences which must be forgiven to the outraged feelings of a wronged and robbed people"; "the number of murders and assaults perpetrated upon negroes is very great": these are words of General Schurz. The accompanying testimony supplies fearful details. All this was painfully inconsistent with the message of the President and the report of General Grant.

The marked effect of this incident shows the sensitive condition of the public mind. The word "whitewashing" became a text for the press on opposite sides. The interest also found expression in letters.

Wendell Phillips, the orator, always sympathizing with every earnest word for Human Rights, wrote from Boston: —

"Glorious! just the truth, and just the time and place to speak it, was your graphic and most effective description of the President's message. I say this, not that you need confirmation, but because, hearing the clamor against you, it seems right you should have the 'cheers' as well as the 'hisses.'"

Rev. Justin D. Fulton, a successful Baptist preacher, wrote from Boston: —

"Before I can begin my sermon, I want to send you my thanks for your noble stand in the Senate of the United States against the President and for the country. Last Sabbath, in the great congregation, I publicly thanked God that you used the word 'whitewashing.' The same thing I did in Albany; the same thing I do now."

Hon. Thomas Russell, Judge of the Superior Court, and afterwards Collector of the port of Boston, wrote from Boston: —

[1] Executive Documents, 39th Cong. 1st Sess., Senate, No. 1, pp. 2-105.

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"I only write to thank you heartily for your courage and fidelity. I would say, 'Go on,' but that is needless."

Edward W. Kinsley, a merchant, who never forgot the claims of Human Rights or of personal friendship, wrote from Boston:—

"I know you are too busy to read any letter from me; but I cannot let the day pass without thanking you for the course you are taking in the Senate this session. Thank God, we have one man on the watch-tower who will not slumber or sleep."

Hon. Samuel E. Sewall, the able lawyer and Abolitionist, wrote from Boston:—

"I do not know any man who is doing so much for the country, in the present crisis, as you are by your speeches and writings. We are all here watching the course of Congress with the deepest anxiety."

Nathaniel Moody, always on the side of Humanity, wrote from Chelsea, Massachusetts:—

"Permit me, as one of your constituents, to thank you for the noble stand you have taken in regard to Reconstruction, which I regard of quite as much importance as was the persistent prosecution of the war just brought to a successful conclusion. I did expect no less from you, considering your former great efforts in the true cause of Humanity."

Mrs. John Davis, widow of Mr. Sumner's first colleague in the Senate, wrote from Worcester, Massachusetts:—

"We hope the whitewashing is over, and that common sense, to say nothing of justice, will resume the sway."

Rev. George N. Richardson wrote from Westborough, Massachusetts:—

"You are bearing yourself so bravely and faithfully in behalf of a cause very dear to me, that it is the impulse of my heart to thank and bless you."

Rev. Richard S. Storrs, the eminent Congregational clergyman, wrote from Braintree, Massachusetts:—

"It must be a great satisfaction to you to know that you have the unlimited confidence and sympathy of your constituents; and I am sure you have the approval of all loyal men and *angels*, while struggling against the devices of the arch enemy of God and man."

Rev. J. R. W. Sloane, a pastor of the Presbyterian Church, wrote from New York:—

"To yourself and Thaddeus Stevens the nation is now looking as the

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defenders of Truth and Justice. Thanks for your just rebuke of the President's 'whitewashing' message. The statements of this paper are directly in the face of what I know to be the state of things in the South. I rejoice that it did not pass unrebuked."

E. Burt wrote earnestly from Cleveland, Ohio: —

"Thanks be to our Heavenly Father, dear Sir, that there are no Brookses in Congress this year, to raise their canes over any man's head. Now, Sir, my prayer is, that God may give you strength to do your duty this year, as no other man in or out of Congress can do it; for no other man has shown up the barbarism of Slavery like yourself. Sir, when but a few days ago you asked the reading of Carl Schurz's report, and it was not granted, my blood started with such a rush in my veins that I could hardly contain myself. 'What!' said I, 'has it come to this, after the loss of so many of the most valuable lives of our dear countrymen, so much of blood and treasure?'"

Thomas D. Hoxsey wrote from Paterson, New Jersey: —

"You have to fight your old battle over again, and I only hope and trust that you may have the physical health to stand firm where your late speeches place you."

Colonel Wentworth Higginson, who served so well at the head of colored troops, and does such honor to American literature, in a letter from Newport, Rhode Island, thanking Mr. Sumner for speeches, added, "especially that one word *whitewashing*, which was the best speech of all."

These brief utterances illustrate the sentiment beginning to prevail. The issue with the President, already foreseen, had come.

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ENFRANCHISEMENT AND PROTECTION OF FREEDMEN.

ACTUAL CONDITION OF THE REBEL STATES.

SPEECH IN THE SENATE, ON A BILL TO MAINTAIN FREEDOM IN THOSE STATES, DECEMBER 20, 1865.

ON the day after the "whitewashing" incident, Mr. Sumner seized an opportunity of setting forth the actual condition of the States lately in rebellion, and the duty of Congress with regard to them. He took the floor on a bill, introduced by his colleague, Mr. Wilson, "to maintain the freedom of the inhabitants in the States declared in insurrection and rebellion by the Proclamation of the President of the first of July, 1862," and spoke as follows.

MR. PRESIDENT, — When I think of what occurred yesterday in this Chamber, when I call to mind the attempt to whitewash the unhappy condition of the Rebel States, and to throw the mantle of official oblivion over sickening and heartrending outrages, where Human Rights are sacrificed and Rebel Barbarism receives a new letter of license, I feel that I ought to speak of nothing else. Years ago, in the days of Kansas, I stood here when one small community was surrendered to the machinations of slave-masters. I stand here again, when, alas! an immense region, with millions of people, is surrendered to the machinations of slave-masters. Sir, it is the duty of Congress to arrest

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this fatal fury. Congress must dare to be brave; it must dare to be just. I shall not be diverted from the question before the Senate, although, in unfolding the necessity of present legislation for the protection of freedmen, I shall be led necessarily and logically to speak of the condition of the Rebel States.

All must admit that the bill of my colleague is excellent in purpose. It proposes nothing less than to establish Equality before the Law, at least so far as civil rights are concerned, in the Rebel States. This is done simply to carry out and maintain the Proclamation of Emancipation, by which the Republic is solemnly pledged to "maintain" the emancipated slave in freedom. Here is our pledge: "The Executive Government of the United States, including the military and naval authorities thereof, will recognize and *maintain the freedom of said persons.*" The pledge is without limitation in space or time. It is as extended and as immortal as the Republic itself. Does anybody call it vain words? I trust not. To that pledge we are solemnly bound. Wherever our flag floats, as long as time endures, we must see that it is sacredly observed.

The performance of this pledge cannot be intrusted to another; least of all can it be intrusted to ancient slave-masters, embittered against the slave. It must be performed by the National Government. The power that gave freedom must see that freedom is maintained. This is according to reason. It is also according to examples of history. In the British West Indies we find this teaching. Three of England's greatest orators and statesmen, Burke, Canning, and Brougham, at successive periods united in declaring, from experience in the British West Indies, that whatever the slave-masters under-

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took to do for their slaves was always "arrant trifling," and that, whatever might be its plausible form, it always wanted "an executory principle."[1] More recently the Emperor of Russia, when ordering Emancipation, declared that all efforts of his predecessors in this direction had failed, because left to "the spontaneous initiative of the proprietors." I might say much more on this head, but this is enough. I assume that no such blunder will be made by us, — that we shall not leave to the old proprietors the maintenance of that freedom to which we are pledged, and thus break our own promises and sacrifice a race.

Elsewhere I have alluded to Emancipation in Russia.[2] But the example is worthy our deepest study, unless we purposely reject history. All know that in 1861 the Emperor by solemn proclamation gave freedom to upward of twenty-three million serfs; but it is not generally known by what supplementary provisions this freedom was assured.

I have in my hands an official copy of this great act, published at St. Petersburg, by which it is declared that the serfs, after an interval of two years, are "entirely enfranchised."[3] Under this Proclamation, a new set of local magistrates is constituted, with "special court" and "justices of the peace" in each district, to superintend the working of the Proclamation, and to examine on the spot all questions arising from Emancipation. The provision is not unlike our Bureau of Freedmen, which is vindicated by this example.

[1] Burke, Letter to Henry Dundas, April 9, 1792: Works (Boston, 1865–67), Vol. VI. p. 261.

[2] *Ante*, Vol. IX. pp. 444–446.

[3] Affranchissement des Serfs: Traduction des Documents Officiels, Résumés Explicatifs et Annotations (St. Petersburg, 1861).

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The good work did not stop here. The Emperor did not leave the freedmen without protection, handed over to the tender mercies of former owners. By a careful series of "Regulations" accompanying the Proclamation, prepared with minutest care, and divided into chapters and sections, their rights are secured beyond question. A copy of this remarkable document shows it to be a model for generous imitation.

These "Regulations" begin with a formal declaration, that the freedmen by the act of Emancipation "acquire the rights belonging to free farmers." The language is general. It is "the rights of free farmers," not in certain particulars, but in all particulars, — not merely in exemption from the authority of their masters, but in complete enfranchisement. Surely this is an example for us.

The "Regulations" then proceed in formal words to fix and assure these rights, civil and political. They are not left to inference or to future discussion, but positively declared with all possible detail.

By one section the freedman is secured in all his *rights of family* and *rights of contract*, as follows: —

"The articles of the Civil Code on the rights and obligations of the family are extended to the freedmen; consequently they acquire the right, without the authorization of the proprietor, to contract marriage, and to make any arrangement whatever concerning their family affairs; they can equally enter into all agreements and obligations authorized by the laws, as well with the state as with individuals, on the conditions established for free farmers; they can inscribe themselves in the guilds, and exercise their trades in the villages; and they can found and conduct factories and establishments of commerce."

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Here is a beautiful example for us.

By another section the freedman is secured in *rights of property.* He may acquire and alienate property of all kinds, according to the general law; and, besides, "the possession of the homestead" on which he has lived is guarantied to him on certain conditions. Here is another example for us.

By further provision the freedman is secured complete *Equality in the courts:*—

"He shall have the right of action, whether civilly or criminally, to commence process, and to answer personally or by attorney, to make complaint, and to defend his rights by all the means known to the law, *and to appear as witness and as bail conformably to the common law.*"

Mark these words. He may appear "as witness and as bail." It is an example for us.

By other provisions the freedman is secured *Equality in political rights,* according to the measure of such rights in Russia, thus:—

"On the organization of the towns, he shall be entitled to take part in the meetings and elections for the towns, and to vote on town affairs, and to exercise divers functions; and he shall also take part in assemblies for the district, and shall vote on district affairs, and choose the chairman."

From all the provisions on this head it appears that the freedman enjoys rights to choose local officers, and to be chosen in turn. Here also is an example for us.

By still another section the freedman is secured *Equality at school and in education,* thus:—

"He may place his children in the establishments for

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public education, to embrace the career of instruction or the scientific career, or to take service in the corps of surveyors."

Here again is an example for us.

Then, still further, for the general protection of the freedman, it is provided that he "cannot lose his rights, or be restrained in their exercise, except after the judgment of the town according to fixed rules"; and still further, that he "cannot be subjected to any punishment, otherwise than by notice of a judgment, or according to the legal decision of the town to which he belongs." Here, too, is an example for us.

Thus does Russia, by careful provisions, supplementary to the act of Emancipation, assure her freedmen in all their rights: first, the right of family and the right of contract; secondly, the right of property, including a homestead; thirdly, complete Equality in the courts; fourthly, Equality in political rights; fifthly, Equality at school and in education; and, finally, all these precious safeguards are crowned by declaring that they cannot lose their rights, or be punished, except after judgment according to fixed rules: thus completely fulfilling that requirement of our fathers, that government should be "a government of laws, and not of men."[1]

I trust that this grand example is none the less worthy of imitation because from an empire which is not supposed to sympathize with liberal ideas. The Republic cannot in this respect lag behind the Empire. Besides, all that we hear shows that the experiment has been successful. An experiment inspired so completely by the spirit of justice cannot fail.

[1] Constitution of Massachusetts, Declaration of Rights, drawn by John Adams.

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My colleague is right in introducing his bill and pressing it to a vote. The argument for it is irresistible. It is essential to complete Emancipation. Without it Emancipation will be only *half done*. It is our duty to see that it is wholly done. Slavery must be abolished not in form only, but in substance, so that there shall be no Black Code, but all shall be Equal before the Law.

As to the power of Congress over this question, I cannot doubt it. My colleague assumes the power, without tracing it to any particular source. It may be a military power, precisely as the Proclamation of Emancipation, — and here the authority is as clear and absolute as in the District of Columbia; or it may be in pursuance of the Constitutional Amendment, which provides that Congress may "enforce this Article by appropriate legislation"; or it may be to carry out the guaranty of a republican form of government.

There are measures of my own, already introduced by me, now on your table, looking to the same result as the pending bill, which proceed specifically on the two latter grounds.

One of these is entitled "A bill supplying appropriate legislation to enforce the Amendment to the Constitution prohibiting Slavery," from which I read two sections.

Here Mr. Sumner read sections 3 and 4, as given on a previous page.[1]

This bill proceeds on the idea that the Amendment is now part of the Constitution to all intents and purposes. And who can doubt this? Already it is adopted by three fourths of the States having Legislatures, —

[1] *Ante*, p. 17.

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in other words, by "the Legislatures of three fourths of the several States." The States having no Legislatures at the time of its proposition by Congress cannot be counted. Of what value is the enforced consent of disloyal and barbarous bodies pretending to act for certain States at the dictation of military power? Military power may govern during the war; but it is impotent to make a republican State, or to adopt an Amendment of the Constitution.

Another bill introduced by me, and now on the table, is founded on the guaranty clause. I give its title: "A bill in part execution of the guaranty of a Republican form of Government in the Constitution of the United States."[1]

Both these bills are broader even than that of my colleague; for they point to the absolute obliteration of all legal discriminations founded on color, whether in the court-room or at the ballot-box; and to this conclusion we must come at last. But I confess that I feel the dignity, the grandeur, and the substantial value which would be found in a declaration of Congress, that an oligarchical government, denying rights to a whole race, undertaking to tax without representation, and discarding "the consent of the governed" as its just foundation, cannot be "republican."

The most explicit, the most positive, the most mandatory words in the Constitution are, "The United States shall guaranty to every State in this Union a republican form of government." This great duty is thrown not upon any individual branch of the Government, but upon the United States. It is a duty to "guaranty" — which in itself is a strong term — what? A republican

[1] *Ante*, p. 14.

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form of government. Now, by the lapse of State governments in the Rebel States, this duty is cast upon the United States. But the United States are represented in Congress, or rather by Act of Congress, which in itself is the embodied will of both Houses and of the President. Congress must, therefore, determine what is a republican form of government. Into this question I do not now enter. At the proper time I hope to consider it.[1] For the present I content myself with the remark, that it is absurd to say that a community founded on oligarchical pretensions, excluding from all participation in the government any considerable proportion of its tax-paying citizens, and ignoring the consent of the governed, can be considered a republican form of government. On this proposition I hope to be heard at an early day. Here is one of the greatest questions of our history.

After this brief review of the object to be accomplished, I am brought to consider the practical necessity of such legislation; and here it is my duty to expose the actual condition of the Rebel States, especially as regards loyalty and the treatment of the freedmen. On this head I shall adduce evidence in my possession. In the endeavor to bring what I say within reasonable proportions, I shall adduce only a small part of what has passed under my eye; but it will be more than enough. In bringing it forward, the difficulty is of selection and abridgment.

I begin with something relating to the condition of the Rebel States generally, and shall then consider the different States successively.

[1] *Post*, pp. 136, seqq.

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And now, first, as to the Rebel States generally. I know no testimony that has found its way to the public, with regard to the general condition of the South, which will compare in value with a series of letters by A. Warren Kelsey, a business agent of character and intelligence above question, who has travelled through the Rebel States. His communications with his employers show singular powers of observation, and are expressed with great clearness. Of course I can give only a few extracts.

"In travelling about, as I have, from one section of the country to the other, I have been able to compare opinions, and, as you know, I have had peculiar and favorable opportunities for ascertaining the views they have in common. I have endeavored to trace the motives from which they have acted and which now animate them, and their *real* purpose for the future, if they have one. In giving you my opinion now, it is proper to say that I have taken no one individual as a criterion of the whole, and have judged them only by the opinions I find they are generally agreed upon; neither have I any one's statement for their thoughts and actions. My opinions, deductions, and conclusions are derived from my own experience and observation among them, and, whether they shall be confirmed or denied by others, are, notwithstanding, my honest and sincere convictions.

. . . . .

"While I am able to say that they have made up their minds that Emancipation is a fact, and not to be avoided, I am obliged to state my earnest opinion, that, so far as secession is concerned, — that is, the doctrine of State Rights, — it is more deeply rooted than ever among them. They are perfectly united in the belief that the division of this country is both right from a moral stand-point and politic as a measure of expediency. They have simply

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changed their base from the battle-field to the ballot-box, believing, as they very frankly admit, that greater triumphs await them there than they could ever hope for in the field. In almost every house hangs the old, worn Confederate uniform, which is displayed with pride and satisfaction to all comers. So far from repenting of the stand they took, they glory in it. They regret the result, and their non-success, it is true, but not one in a thousand will admit they were in the wrong.

. . . . .

"They argue that at least ninety-five in every two hundred votes at the North are sure to be thrown in their favor, and they can now rule the Union by giving up, which is cheaper than to persist in their idea of a separate government. That idea, however, is only laid aside for a time. Every boy at the South is being educated in the belief that the relations the South to-day sustains toward the North are the same as those of Hungary or Venetia toward Austria, or of Poland to Russia. They bide their time. They have adopted for their motto, 'Patience, and shuffle the cards.' The snake, so far from being killed, is barely 'scotched.' Meantime they deem it better to rule in the Union than to serve in the Confederate army.

. . . . .

"As to their affection for their military leaders, you will find proof in the elections at Richmond and South Carolina. No man has a better claim to their sympathy, and none stand a better chance of election, than those who were the last to give up. Motives of policy may induce them to nominate others, but the fact remains as I have stated. I repeat, that General Lee and Wade Hampton are the two most popular and best loved men in the South to-day. I have heard but one disparaging remark made of General Lee since I was at the South, and that was in this connection. I was riding one night in a hack across the gap in

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a railway, made by Wilson, and, as usual, the conversation turned on political affairs and the condition and prospects of the Southern people. One man said that General Lee stood the best chance for the next Presidency, — by the way, that is a very prevalent idea here at the South, — when another remarked that he would rather have Andrew Johnson. I was curious to know why, and inquired. He replied, that 'he had but little confidence in Lee since he favored negro soldiers, and in his opinion he was not much better than a Black Republican.'

. . . . . .

"At present every one at the South is occupied in his personal and family interests. There are no political parties, — very little coherence of opinion as to the policy best to be pursued. But I find among the knowing ones, particularly those who have been on to the North, and remained some time in New York or Washington, a sanguine belief that they can easily resume the reins of office; and these men are the only Unionists in the South to-day. You can depend upon it, that the Southern States in the future will present one solid, unanimous front; their leaders have them well in hand. And this is precisely what ninety-nine in every hundred of the men, women, and children believe sincerely as to the situation to-day: first, that the South of right possesses, and always possessed, the right of secession; secondly, that the war only proved that the North was the strongest; thirdly, that Negro Slavery was and is right, but has been abolished by the war. The Southerners are too smart not to see that Slavery is dead, but many of them hope as long as the black race exists here to be able to hold it in a condition of practical serfdom. All expect the negro will be killed in one way or another by Emancipation. The policy of those who will eventually become the leaders here at the South is, for the present, to accept the best they can get, to acquiesce in anything and everything, but to strain

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every nerve to regain the political power and ascendency they held under Buchanan. This they believe cannot be postponed longer than up to the next Presidential election. They will do all in their power to resist Negro Suffrage, to reduce taxation and expenditures, and would attack the national debt, if they saw any reason to believe repudiation possible. They will continue to assert the inferiority of the African; and they would to-day, if possible, precipitate the United States into a foreign war, believing they could then reassert and obtain their independence. They will, most of them, take any oaths you may cause to be adopted, and break them immediately, and without scruple. In one word, this people have placed themselves in resolute antagonism to the North, and *this* generation, at least, will always hate the Northern people, while the boys are being educated to the same idea.

. . . . . .

"On the whole, looking at the affair from all sides, it amounts to just this: if the Northern people are content to be ruled over by the Southerners, they will continue in the Union; if not, the first chance they get, they will rise again."[1]

Other testimony is in harmony. For instance, a trustworthy traveller, who has recently traversed the Gulf States, thus writes in a private letter to myself:—

"The former masters exhibit a most cruel, remorseless, and vindictive spirit toward the colored people. In parts where there are no Union soldiers I saw colored women treated in the most outrageous manner. They have no rights that are respected. They are killed, and their bodies thrown into ponds or mud-holes. They are mutilated by having ears and noses cut off."

[1] Letters from New Orleans, October, 1865: Nation, October 26, 1865, Vol. I. pp. 523, 524.

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Such a people already talk of repudiating the national debt. To the question, "Would it be safe to trust white men at the South with the power to repudiate the national debt?" a person in gray uniform at once replied: "Repudiate? I should hope they would. I'm whipped, and I'll own it; but I'm not so fond of a whipping that I'm going to pay a man's expenses while he gives it to me. Of course there are not ten men in the whole South that would n't repudiate." Such is the spirit of these States. But a candidate for Congress in Virginia undertook to speak for the Rebel States.

"I am opposed to the Southern States being taxed at all for the redemption of this debt, either directly or indirectly; and, if elected to Congress, I will oppose all such measures, *and I will vote to repeal all laws that have heretofore been passed for that purpose;* and, in doing so, I do not consider that I violate any obligations to which the South was a party. *We have never plighted our faith for the redemption of the war debt.* The people will be borne down with taxes for years to come, even if the war debt is repudiated. It will be the duty of the Government to support the maimed and disabled soldiers, and this will be a great expense; and if the United States Government requires the South to be taxed for the support of Union soldiers, we should insist that all disabled soldiers should be maintained by the United States Government, *without regard to the side they had taken in the war.*"

A late writer, who within a few days has returned from an extensive tour in North Carolina, South Carolina, and Georgia, and who now enjoys a seat in your Reporters' Gallery, thus testifies with regard to the national debt:—

"The national debt doubtless seems to you beyond the

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reach of any hand. Yet I regard it as very probable that one or two or all of three things will be attempted within three years after the Southern members of Congress are admitted to seats, — the repudiation of the National debt, the assumption of the Confederate debt, or the payment of several hundred million dollars to the South for property destroyed and slaves emancipated. I met several shrewd and intelligent men who expressed the belief that Confederate bonds will be worth something in two or three years. One told me that large amounts were held in New York and England, and he expected steps would be taken within five years toward paying them from the National Treasury. I heard no man openly advocate the repudiation of the National debt, but scores argued to me that it would not be fair to make the South pay any part of it; and one man said he believed, if the case were only carried up, that the Supreme Court would so decide. The idea that the nation will pay the South for her slaves extensively prevails both in Georgia and South Carolina. It is incorporated into the new Constitution of Georgia, and is openly advocated by many influential men in South Carolina. Wherefore, I say, the national debt needs watching."

Let the Secretary of the Treasury[1] take notice, and not expose the national finances to the peril which menaces them.

Passing from this testimony, which is general, I come to the neighbor State of Virginia. I read from a private letter received by myself from a Government officer there: —

"We who are here have a much better opportunity of knowing the feeling of the people than you at a distance, for

[1] He had already united with President Johnson in his "policy."

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they will not speak as freely before you as they will before us here and among themselves. The feeling of disloyalty is as strong here now as it was during the war, but they cannot show it as they did then; and with regard to the freedmen there is every disposition on their part to make them odious. They constantly talk of insurrection, insubordination, thieving, idleness, and every species of crime and vice; all of which I assure you is entirely false. They are perfectly subordinate to every law, and, so far as thieving is concerned, such an assertion is gratuitous or false; for all cases of thieving, certainly, I am sorry to say, are done by the whites."

I also read from another private letter:—

"The clash of arms has subsided, the serried hosts of Rebels have been disbanded, and the huge paraphernalia of war have been scattered; but, notwithstanding these facts, the low mutterings of sullen discontent are yet heard, and the desire to persecute and break down all truly loyal men is exhibited on every hand with even more sly ferocity than while the war of sections raged.

"We are residents of this city, each engaged in public business, and consequently thrown into contact with all classes of citizens. Hourly we hear denunciations of the Government, and prayers for the removal of the military. And why these denunciations and these prayers, if the oath of allegiance had been honestly taken, to be sacredly observed? No, Gentlemen, the spirit of rebellion is not dead, and will never die while Democratic leaders in the South are relieved of their treachery and turned loose to stir up sedition and to incite rebellion. The men make loud professions of loyalty, and their press reverberates the echo from hill and valley; but you have only to read their fanfaronades on loyalty to satisfy yourselves of the bitter hatred that fills their breasts against the Union, and the burning hate with

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which they will proceed to pour out the vials of their wrath upon all Union men, when once they can secure seats in Congress and get possession of the reins of State government. In their hearts they cling as ardently to State sovereignty as ever, and once give them the power and they will tax the loyal people to the full value of the slave property destroyed by the war. Mark this prediction."

Another private letter, from a person so situated as to be singularly well informed, thus foreshadows a system of Peonage: —

"The necessity of the courts is beyond all question. Even with these courts it requires watchfulness to protect the blacks. If they were left without these courts, the whites would keep them forever in bondage, by keeping them in debt; and I am afraid that the legislation of the States will be to the effect to establish here the Mexican system of Peonage, by using some very extraordinary terms to coerce 'hatched-up' accounts against the blacks."

To this I might add indefinitely, exhibiting the bad temper and disloyal spirit which prevail throughout Virginia. Bayonets are no longer flashing there; bullets are no longer whizzing there; but the traitorous soul that inspired the Rebellion still fills the State with its malignant breath. Give it not, I entreat you, the power to rule.

From Virginia pass to North Carolina. Here the testimony is the same. During this week I have seen Government officers who have been in service, one since 1863, who report that it is not safe to speak one's sentiments there; that liberty of speech does not exist; that the freedmen, so far from being lazy or remiss, are willing to work, but that they are exposed to unutterable

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hardship and cruelty. On these points the testimony is explicit. A loyal resident of North Carolina writes me:—

"I tell you, Sir, the only difference now and one year ago is, that the flag is acknowledged as supreme, and there is some fear manifested, and they have no arms. The sentiment is the same. If anything otherwise, more hatred exists toward the Government. *I know there is more toward Union men, both black and white.*"

More hatred toward the Union men, both white and black, than one year ago! Such is the condition of North Carolina.

In accordance with this is other testimony.

"Two women, school-teachers, who were recently sent from Wilmington to Fayetteville to establish a school for colored children, were informed by the sheriff of the county that they would not be allowed to start their schools, nor would they be allowed to land; but they might remain on the steamer until her return to Wilmington, inasmuch as they were women; if they were men, they would receive such treatment as was awarded to such meddlesome characters before the war.

"Mr. Dickinson says, that, while he was in Fayetteville, a negro was strung up by the thumbs in the public square, and received forty-nine lashes from a civil officer recently appointed by Governor Holden."

A Wilmington paper makes the following report.

"General Ames, General Duncan, and Colonel Donnelson have returned from an official visit to Fayetteville, where they went to ascertain the truth of the reports coming from there in regard to the treatment of the colored people.

"The result of their visit substantiates the fact that the

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negroes have been cruelly treated, not only by the civilians, but also by the civil authorities there.

"Two negroes were tied up and publicly whipped by the sheriff, on the sentence of a magistrate.

"Other negroes were tied up to trees and whipped, and left tied to the trees until a storm came up and prostrated the trees, and the poor negroes fell with them.

"Citizens exercised the authority of masters over the negroes, and punished them at their will with such severity as to them seemed fit.

"It is even reported that negroes have been killed in the most cruel manner."

Why heap instances? They might be piled high; but why pain the heart by such an exhibition?

From North Carolina pass to South Carolina, where the testimony is, if possible, still more explicit. The spirit of this Rebel State, yet rebel in heart, appears in the well-known letter from Wade Hampton, which I do not stop to quote. It is especially manifest in the frank speech of James R. Campbell in the Convention, from which I read an extract.

"I believe, that, when our votes are admitted into that Congress, if we are tolerably wise, governed by a moderate share of common sense, we will have our own way. I am speaking now not to be reported. We will have our own way yet, if we are true to ourselves. We know the past; we know not what is to be our future. Are we not in a condition to accept what we cannot help? Are we not in a condition where it is the part of wisdom to wait and give what we cannot avoid giving? I believe as surely as we are a people, so surely, if we are guided by wisdom, we will by the beginning of the next Presidential election, which is all that is known of the Constitution, (for, when you talk of the

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Constitution of the United States, it means the Presidential election, and the share of the spoils,) I believe then we may hold the balance of power."

That Mr. Campbell spoke according to the sentiments of the prevailing politicians is attested by a private letter which I have received from a Government officer so situated there as to know the real condition of things. I read extracts only.

"The speeches in Convention and Legislature are doubtless known to you, and the *animus* pervading all action of these bodies. Mr. Campbell expressed it exactly. Let us do what we *have to*, as little as we are obliged to, get into Congress somehow, and *then* pay off the score. One or two minor matters in this connection I mention as showing how the current sets.

"1. *The election for members of Convention, 4th September.* The favorites in every contested case were those most prominent in Secession proceedings of past years. The majority of them did not take the amnesty oath. . . . .

"2. Not even the prospect of securing a favorable recognition in Congress could secure the election of any man tainted with Unionism, in opposition to any candidate thoroughly established as an opponent to the Government in past time.

"3. And yet, strange as it may seem, *the people*—by which I mean the planters generally, exclusive of the *politicians*—are not savagely disloyal; and this is one main point to which I desire earnestly to testify. It is a fact that the political working of the State is in the hands of one hundred and fifty to one hundred and eighty men. It has taken me six months to appreciate the *entireness* of the fact, though of course I had heard it stated.

"It seems to me a most Providential opportunity is now offered to break up this maladministration of politics. The

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people among whom I move are becoming restive under present disadvantages, and criticize sharply the acts of the Legislature, which seem to delay Reconstruction. If the State is refused representation in the present Congress, and the acts of the State Legislature, its speeches, its Black Code, its general fractious and combative attitude, its spirit in accepting the Constitutional Amendment and refusing the annulment of Secession Ordinances are brought to light, — if, in a word, it can be shown that the long recognized politicians of the State have thoroughly damaged the State by taking her out of the Union, and have also kept her from coming in, *there will be a political revolution in the State in less than two months.* The Rebels so promptly pardoned by the President will meet no such complacency from the people. I *know* this to be true, — am taught it anew every day.

"If the State authority is to be recognized, and the present Legislature triumphs by forcing the State into the Union, I anticipate very disastrous consequences. The freed people are well enough; they do not know as much as could be desired, but they know quite as much as could be expected, and are open to instruction. But that instruction must come from *the Government, through the military*, untrammelled by any fractious jobbing of State Legislatures. There is no confidence on the part of the freed people in the *State;* they only know the United States Government, and no other will answer."

Here is a letter from a South-Carolinian who served in the Rebel army, but who now sees the error of his ways.

"I am sorry to say Governor Orr's inaugural yesterday received no applause at all from the audience: its sentiments were too Union-loving for them. I am sorry also to say that the South-Carolinians generally entertain to a great

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extent their old ideas and prejudices, so disastrous of late to the State. One is almost compelled to think they insanely wish to bring upon themselves more and greater mortifications. Witness the vote given Hampton, who refused to be a candidate. What an unwise display of a factious and discontented spirit! Few seem willing to admit the simple proposition that all causes of ill-feeling between North and South have been settled by the arbitrament of the sword, and we must submit sincerely. They seek rather to keep alive the ill-feeling that has made us unhappy for so many years, *and that ill-advised disposition to supervise the actions of the United States Government.*

"If this war does not settle all issues, and settle them forever, *it will be because the General Government fails to use the power it has obtained.* I am as dear a lover of South Carolina as any man in it, and for that reason I wish to see peace and harmony restored throughout its borders. But that can never be, if the men who tried hardest to break up the Government are, immediately they find themselves unsuccessful with the sword, *allowed to take seats in Congress and recommence the agitation with their tongues and by their arguments and votes. More inflammatory speeches were not made in* 1860 *than have been delivered during the late canvass. If examples are not made, if leading men are not made to feel some ill effects from an unsuccessful attempt to revolutionize, then agitation will never cease, but will be kept up by ambitious men of mean talents, who can hope to rise only in times of disorder, or by operating upon and influencing the passions of the multitude.*"

To cap the climax of this iniquity, a body of men calling themselves the Legislature, but having small title to be considered a legal body, have undertaken to enact a Black Code, separating the two races, in defiance of every principle of Equality. I quote a provis-

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ion fastening apprenticeship or serfdom in new form upon the unhappy freedman.

"Colored children, between the ages mentioned [males two and twenty-one, females two and eighteen], who have neither father nor mother *living in the district in which they are found*, or whose parents are paupers, or unable to afford to them maintenance, *or whose parents are not teaching them habits of industry and honesty*, or are persons of notoriously bad character, or are vagrants, or have been, either of them, convicted of an infamous offence, may be bound as apprentices by the District Judge, or one of the magistrates, for the aforesaid term." [1]

Under these words no colored minor in the State is safe for one moment from compulsory serfdom.

The lash is also prescribed as a means of enforcing contracts.[2] The lash once more is to resound.

The planters at their public meetings give utterance to the same brutal spirit. Here is a series of resolutions, where, after calling for the withdrawal of the troops of the United States, and declaring themselves pledged to the existing state of things, and that it is their "honest purpose to abide thereby," they proceed as follows.

"*Resolved*, That, if inconsistent with the views of the authorities to remove the military, we express the opinion that the plan of the military *to compel the freedman* to contract with his former owner, when desired by the latter, is wise, prudent, and absolutely necessary.

"*Resolved*, That we, the planters of the district, pledge ourselves not to contract with any freedman, unless he can

[1] Act to establish and regulate the Domestic Relations of Persons of Color, etc., Sec. XVII. [Approved December 21, 1865.]

[2] Ibid., Sections L., LII., LIII.

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produce a certificate of regular discharge from his former owner.

"*Resolved*, That under no circumstances whatsoever will we rent land to any freedmen, nor will we permit them to live on our premises as employees."

Thus is the freedman, whose liberty the United States are bound to maintain, handed over to *compulsory service*, and under no circumstances is land to be rented to him. And yet these people announce that they accept the existing state of things, and that it is their honest purpose to abide thereby! Of course they accept a state of things which leaves them once more "masters" of their former slaves. Of course they will abide by this. Be it our function to teach them the duty and necessity of Equal Rights.

From South Carolina pass to Georgia, and there is the same wretched story. The spirit of the State appears in the language of Mr. Simmons in the Convention: —

"Let us repudiate only under the lash and the application of military power; and then, as soon as we are an independent sovereignty, restored to our equal rights and privileges in the Union, let us immediately call another Convention and resume the debt."

Testimony from various quarters shows the same spirit. A recent writer, of unimpeachable authority, now sitting as reporter in your galleries, thus testifies: —

"In the stage between Augusta and Milledgeville I rode with two gentlemen of considerable local weight and prominence, who were both anti-secessionists in 1860–61. They talked of the approaching Convention, and of its probable action in redistricting the State for Representatives. 'Well,

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Colonel,' said the younger, himself a man of over forty years, — 'well, Colonel, what will be our proper course, when we are once more fully restored to the Union?' The answer came, after a moment's consideration: '*We must strike hands with the Democratic party of the North, and manage them as we always have.*' There was a pause while we rattled down the hill, and then the questioner responded: 'That is just it; *they were ready enough to give us control, if we gave them the offices, and I reckon they have not changed very much yet.*' There was then conversation on other matters; but half an hour later, after a mile or so of silence, the Colonel suddenly resumed: 'Yes, Sir, our duty is plain; we shall be without weight, now that Slavery is gone, unless we do join hands with them. Andy Johnson will want a reëlection, and the united *Democratic party must take him up. It shall be a fair division: we want the power, and they want the spoils.*'"

The same writer, in another letter, shows how Rebels were honored in the Convention.

"'I'll be d—d, if I vote for any man who did not go with the State,' said one of the delegates, while the canvass for officers was going on; in accordance with which spirit the secretary is a gentleman who was a colonel in the Rebel army, and the doorkeeper a gentleman who lost an arm in the service."

Where such a spirit prevails, the freedmen fare badly. In Georgia they are treated cruelly. A traveller writes: —

"The hatred toward the negro as a freeman is intense among the low and brutal, who are the vast majority. Murders, shootings, whippings, robbing, and brutal treatment of every kind are daily inflicted upon them, and I am sorry to say in most cases they can get no redress. They don't

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know where to complain or how to seek justice, after they have been abused and cheated. The habitual deference toward the white man makes them fearful of his anger and revenge."

An official of the Government, after traversing Mississippi and Alabama, writes from Georgia in a very recent letter: —

"Every day the press of the South testifies to the outrages that are being perpetrated upon unoffending colored people by the State militia. These outrages are particularly flagrant in the States of Alabama and Mississippi, and are of such a character as to demand most imperatively the interposition of the National Executive. These men are rapidly inaugurating a condition of things, a feeling among the freedmen, that will, if not checked, ultimate in insurrection. The freedmen are peaceable and inoffensive; yet, if the whites continue to make it all their lives are worth to go through the country, as free people have a right to do, they will goad them to that point at which submission and patience cease to be a virtue.

. . . . .

"I call your attention to this matter, after reading and hearing from the most authentic sources, officers and others, for weeks, of the continuance of the militia robbing the colored people of their property, — arms, — shooting them in the public highways, if they refuse to halt, when so commanded, and lodging them in jail, if found from home without *passes*, and ask, as a matter of simple justice to an unoffending and downtrodden people, that you use your influence to induce the President to issue an order or proclamation forbidding such wicked and unlawful proceedings, and, if he deem it prudent, forbidding the organization of State militia. *The only military force* NEEDED *in the South is more regular and volunteer troops to keep in proper subjec-*

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tion those lately in rebellion, and to teach them to treat the freed people in a manner becoming a civilized community."

Another witness, himself a Georgian, with ample opportunities of information, testifies: —

"I have personal and friendly relations with many leading men of this section: I had before the war. I have met many of them in New York and in Washington within the past few months, and have, as a citizen of the South, had frequent conversations with them upon our future, and the means that should be employed to begin it auspiciously. These interviews have been free and open in interchange of opinion, and I must believe that I had laid before me the intentions of those who must and will again assume the leadership here. If they are not so honored, their opinions will show how they *would* lead, had they the power.

"Among these were four ex-governors of three different States, who had received pardons from President Johnson. Our conversation naturally and necessarily turned to the future of the emancipated negroes. Their past and present condition was discussed, and their chances as well as our own were of course considered, and everything that could bear upon their future was canvassed. The course to be pursued by the Legislatures of the reconstructed States, and the laws to be enacted, in order to obtain the fulfilment of contracts with the freedmen employed, occupied no small portion of consideration. In this way I had full opportunity to learn the opinions of those who have been and will be again looked up to as the leaders and directors of Southern opinion and sentiment.

"The unanimity of all was not the least singular thing, especially regarding the *status* of the freedmen and their rights hereafter. If legal chicanery can avail, those rights will be but nominal, and they will remain, as they have ever been, isolated and apart, — free in name, but slaves in fact."

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It seems that in Georgia there is a body of men known as "Regulators," who are thus described by a correspondent of that journal which has for years whitewashed the enormities of Slavery, the "New York Herald": —

"Springing naturally out of this disordered state of affairs is an organization of 'Regulators,' so called. Their numbers include many ex-Confederate cavaliers of the country, and their mission is to visit summary justice upon any offenders against the public peace. It is needless to say that their attention is largely directed to maintaining quiet and submission among the blacks. *The shooting or stringing up of some obstreperous 'nigger' by the 'Regulators' is so common an occurrence as to excite little remark. Nor is the work of proscription confined to the freedmen only.* The 'Regulators' go to the bottom of the matter, and strive to make it uncomfortably warm for any new settler with demoralizing innovations of wages for 'niggers.'"

Such is the unimaginable atrocity which, according to friendly authority, prevails in Georgia. The poor freedman is sacrificed. The Northern settler, believing in Human Rights, is sacrificed also. Alas that such scenes should disgrace our country and age! Alas that there should be hesitation in applying the necessary remedy!

Surely this is enough. I do not stop to dwell on instances of frightful barbarism. One is authenticated in the court of the provost-marshal, where a colored girl was roasted alive! And another writer, in a letter just received, describes a system of "burning" in Wilkes County, Georgia, as "a mild means of extorting from the freed people a confession as to where they have their arms and money concealed." He says, "They were

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held in the blaze." Think of it, Sir, here, in this Republic, they are held in a blaze! And the National Government looks on!

From Georgia pass to Alabama, only to find the same evil spirit and the same succession of enormities, intensified, if possible. Here again I am embarrassed by the variety and extent of evidence.

A recent private letter from Mobile testifies: —

"The press and people here, with one voice, are loud in their praise of President Johnson, for his wholesale manner of dispensing pardons. But I have yet to see the first signs of repentance on the part of those who have received clemency from the Chief Magistrate of the Government. The existing feeling is, that no man who did not support the Confederacy is worthy of trust; and all offices are given to those who did their best to break up the country. President Johnson will find in the end that he has been too liberal in the exercise of clemency. And unless he changes his course, or is checked by Congress, the most corrupt men in the South will again get into power, and sway the destinies of this section of the country.

. . . . .

"And until the labor question is adjusted between the planters and the freedmen, we cannot look forward to a time of prosperity. The indications at present are not favorable to a satisfactory solution of this difficult problem. The planters hate the negro, and the latter class distrust the former; and while this state of things continues, there cannot be harmonious action in developing the resources of the country. Besides, a good many men are unwilling yet to believe that the 'peculiar institution' of the South has been actually abolished, and still have the lingering hope that Slavery, though not in name, will yet in some form practi-

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cally exist. And hence the great anxiety to get back into the Union, which being accomplished, they will then, as I have heard it expressed, 'fix the negro.'

. . . . .

"I look forward with deep solicitude to the approaching session of Congress. I hope there will be strength and moral courage enough in that body to keep the ship of state right. The President has a difficult position to fill, and needs all the sympathy and aid he can get from right-minded citizens. But there is no question that he has been most sadly imposed upon within the past few months by designing and corrupt politicians."

Another private letter, from a person so situated as to be accurately informed, makes this painful report:—

"The Government, in taking the responsibility of freeing this people, tacitly engaged to protect them in their freedom. The various departments of Government have solemnly declared the black man entitled to equal rights before the law with the white man. Yet it is the simple fact, capable of indefinite proof, that the black man does not receive the faintest shadow of justice. I aver that in nine cases out of ten within my own observation, where a white man has provoked an affray with a black, and savagely misused him, the black man has been fined for insolent language, because he did not receive the chastisement in submissive silence, while the white man has gone free. It is the simple truth that the most flagrant crimes against the blacks are not noticed at all; and, indeed, a man loses caste, if he interests himself about them.

"It is the simple truth that black men are not allowed to use their own property to the best advantage, or in any way to make such use of their capabilities as would be likely to elevate them in social position.

. . . . .

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"The above are but specimen facts, and they are facts. Every provost-marshal who has been in office here will testify to the truthfulness of the picture. Meantime companies are forming to import coolies and European immigrants to drive the black man from the little chance that is left him. The whole thing may be summed up in one word: *The South is determined to have Slavery, — the thing, if not the name.* And if all restraint is removed, it is as certain as fate that their condition will be far worse than it ever was before. It will be the old system, with all its mitigations rescinded and all its horrors intensified.

. . . . .

"The prospect for the coming winter is overwhelming in its horrors, at best. If the freedmen are left friendless, it will be the very valley of the shadow of death. Let Congress keep these States out of the Union till the shape and tone of their legislation is seen and understood as relating to freedmen, and then keep them out until it is clearly shown whether the people will obey the legislation or make it a dead letter from the beginning."

And still another letter furnishes these revelations:—

"Do not let yourselves be deceived by the influences which reach you. These influences are energetic, active, spare no pains or expense to accomplish certain purposes. I know this people well; I was born and reared with them; they are far more hostile to the Government to-day than they were in 1860. Every demonstration in the State since the surrender has been, in one shape or another, that of hostility to the Union; and every new concession they make is simply made with the hope of thereby obtaining that degree of independence which follows, as they understand and expect it, the resumption of the *status* as States again.

"The elections are just over. The Secessionists were united to a man, — hopeful, active; the Union party disor-

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ganized, discouraged, and dispersed among the Secessionists. President Johnson and Governor Parsons are responsible for it. The enemies of the Union have defeated us, horse, foot, and dragoons, in all parts of the State. The stanch favorites of our party are defeated everywhere.

. . . . . .

"In a word, the friends of the Union are completely under; the successful party are the Secessionists and renegade Unionists, enemies of the Government. It is to the Union party of the North that we are to-day indebted for being able to *live here*."

The person who is styled Provisional Governor of Alabama thus in a late message alludes to Rebel trophies, and stirs the ashes of the Rebellion: —

"Several of these had been deposited in the executive department, and were not removed when the Capitol was evacuated. They were not destroyed, however, by those who took possession of it, but came to my hands as the representative of the State for the time being, and are now carefully preserved and ready to be delivered to the governor elected under the Constitution. We should preserve these sacred souvenirs of the courage and endurance of those who went forth to battle under their folds, and who manfully upheld them with their life-blood."

With such a person in high office, we could expect little else than the barbarism which rages there.

From Alabama pass to Mississippi, and there the same hideous scenes are renewed. Here is the testimony of a citizen of that State, once a slave-master, in a private letter: —

"In respectful earnestness I must say, that, if, at the end of all the blood that has been shed and the treasure expended,

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the unfortunate negro is to be left in the hands of his infuriated and disappointed former owners to legislate and fix his *status*, God help him! for his cup of bitterness will overflow indeed. Was ever such a policy conceived in the brain of men before? After a great step and a mighty victory, you are expected by President Johnson to withdraw your protection from this people and turn their destiny over to those who for centuries have ground them into the dust. Truly, by such a course will your fruits become bitter ashes.

"As a man who has been deprived of a large number of persons he once claimed as slaves, I protest against such a course. If it is intended to follow up the abolition of Slavery by a liberal and enlightened policy, by which I mean bestowing upon them the full rights of other citizens, then I can give this movement my heart and hand. But if the negro is to be left in a helpless condition, far more miserable than that of Slavery, I would ask, What was the object of taking him from those who claimed his services? As things seem now approaching the position of rendering loyalty at the South a disgrace, and those who, amid many dangers and trials, stood true to the Union and the Constitution are to be left to suffer the scorn, contempt, and oppressions of Secessionist traitors, — I say, as this seems to be the settled policy of the Government to the whites so situated, I fear there will remain but little hope for them or the negroes, unless the true men of the country will present a barrier between them and those who are anxious to punish and destroy them."

The pretended Governor of Mississippi, like the pretended Governor of Alabama, exults in Rebel victories, and fans the Rebel flame. Both Convention and Legislature abounded in bitter treason. In the Convention, one of the speakers declared it good policy to accept the present condition of affairs, until the control of the State

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is returned into the hands of the people, and "to submit *for a time* to evils which cannot be remedied." Another speaker, urging the acceptance of the Union, revealed the plot:—

"*If we act wisely, we shall be joined by what is called the Copperhead party*, and even by many of the Black Republicans."

Such is the voice of Mississippi.

Naturally the freedmen are exposed to untold hardships and atrocities. Here is testimony:—

"A Superintendent of the Bureau reports the poor creatures coming in with cruel grievances that are unredressed by these magistrates. General Chetlain tells us, that, while he was in command, for two months, of the Jackson district, containing nine counties, there was an average of one black man killed every day, and that, in moving out forty miles on an expedition, he found seven negroes wantonly butchered; and Colonel Thomas, Assistant Commissioner of the Bureau for this State, tells us that there is now a daily average of two or three black men killed in Mississippi: the sable patriots in blue, as they return, are the objects of especial spite."

There is another authority of peculiar value. It is a letter dated at Webb's Ranch, Issaquena County, Mississippi, November 13, 1865.

"I regret to state, that, under the civil power, now deemed by all the inhabitants of Mississippi (since the order of President Johnson revoking General Slocum's decree in relation to the State militia) to be paramount, the condition of the freedmen in many portions of the country has become deplorable and painful in the extreme. *I must give it as my deliberate opinion, that the freedmen are to-day, in the vicinity of where I am now writing, worse off in most respects than*

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when they were held as slaves. If matters are permitted to continue as they now seem likely to be, it needs no prophet to predict a rising on the part of the colored population, and a terrible scene of bloodshed and desolation; nor can one blame the negroes, if this proves to be the result. *I have heard, since my arrival here, of numberless atrocities that have been perpetrated against the freedmen.* It is sufficient to state that the old overseers are in power again. The agents of the Freedmen's Bureau are almost powerless. Just as soon as the United States troops are withdrawn, it will be unsafe for the agents of the Bureau to remain. The object of the Southerners appears to be to make good their often repeated assertions, to the effect that the negroes would die, if they were freed. To make it so, they seem determined to goad them to desperation, in order to have an excuse to turn upon and annihilate them. There are, within a few miles of where I sit writing, several Northern men, who have settled here, designing to work plantations. *They all assure me that they do not consider themselves safe in the country;* and two of them, ex-colonels in the United States army, are afraid to leave their places without an armed escort. Other Northern lessees do not dare remain on their places."

These are grave words, opening in fearful vista the tragical condition of the freedmen, and the perils of Northern settlers.

And now the pretended Legislature is engaged in fashioning an infamous Black Code; but I do not dwell on this, as it has been already exposed by my colleague.

From Mississippi pass to Louisiana, where anarchy is beginning under the sway of returning Rebels emboldened from Washington. Unionists are menaced in safety. The story is so familiar that I content myself

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with a glimpse. I give the testimony of a responsible person.

"During the canvass, I made a tour through the northern portion of the State, where I have resided for many years and have a large acquaintance among the people, and was surprised to find the spirit of the people more hostile to the Government than at the breaking out of the war. This is especially the case with the leaders, who asserted to me in private conversation that they were more impressed with the truth of Secession than they ever were; that the war against the United States was a just one; that they would not support any man for office who did not participate in that war; and that the only true policy for the Southern people to adopt is to support the Democratic party in opposition to the Republican party of the North. They say that the whole war was an aggression on the part of the Government, and that they intend to use every means in their power to destroy the Government.

"A prominent member of the Legislature, now convened in this city, said to me a short time before the election, that he was a stronger Secessionist now than he ever was, and that he hated the United States Government, and intended to do all in his power to destroy it. This man is a leading member of the Legislature, which, in the House at least, is composed of more than eight tenths who entertain the same feeling, and are now legislating for the loyal citizens of this State.

"There are several respectable men now in this city who are refugees from their homes in the interior of the State, being recently expelled on account of their Union sentiments."

Here is a private letter from an interior town of Louisiana, written by a lady to a lady in New Orleans and communicated to me: —

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"The poor colored people are in a constant state of alarm. There is a Mrs. —— in this place, who teaches the colored children; but the inhabitants, I suppose, not liking their having the advantages of education, expressed their disapproval by shooting at the teacher. At one time she was nursing a sick baby, when a shot passed over her shoulder. No attempts were made to discover the guilty party. Of course all in office here are Rebels. The teacher, who is a poor widow, became so much alarmed for her safety that she petitioned the officers to allow the troops to remain, which they did for a few days. The attempts on her life not being renewed, the troops were obliged to leave, and it was only on her account that they remained as long as they did."

Enough of this. Nor is it all. The pretended Legislature is plotting, like such bodies elsewhere, against the freedman. But I forbear to dwell on the elaborate machination. And yet how can I fail to denounce, with all the energy of my soul, these most cruel and most vindictive attempts to oppress the freedman, to despoil him of rights, and to nullify the great Act of Emancipation? Talk of Nullification! What Nullification in our history comparable to this most wicked attempt? The difference between a revenue law and the great statute of Freedom is as wide as the space between earth and heaven.

Where such things are done, there can be small security for those faithful Unionists who fondly hoped for protection under the national flag. Already they talk of abandoning the State and finding in exile the safety denied at home. The flag they had longed for is now prostituted to the purposes of Rebels, and they are thrust out from the shadow of its folds. Hard fate, almost without parallel in history! For myself, I know

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nothing more touching than the story of Unionists, loving their country and loving freedom, tyrannized by returning Rebels.

In Texas there seemed more hope than anywhere, because a sincerely loyal person had been placed in power there.[1] But a private letter from a loyal Texan cries out: —

"What we of the South fear is, that President Johnson's course will, by its *precipitancy*, enable the old set to reorganize themselves into place and power. For Heaven's sake, preserve us, if you can, from this calamity."

Surely you will preserve them.

But there is special evidence, not to be forgotten. The same authority adduced with regard to the general condition of the Rebel States writes from Galveston, in Texas: —

"If any man from the North comes down here expecting to hold and maintain 'Radical' or 'Abolition' sentiments, *let him expect to be shot down from behind, the first time he leaves his house, and know that his murderer, if ever brought to justice, will be acquitted by the jury.* If the *military* are withdrawn, his house even will be no protection, and he may expect to be hung from his own chamber window. I tell you, Mr. ——, these men are only taking breath and recuperating. Not that there is the *slightest* danger of any *immediate* outbreak. No, — the Southern people are too smart for *that.* They will *never* again measure strength with the North, unless their success be assured beforehand. In case of foreign war, or a domestic convulsion at the North, they will rise; but they will never try it alone and

[1] Later evidence showed that this hope was without foundation.

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without assistance. Meantime they propose to 'take it out in *hating*.' Already our officers are the subject of a social ostracism. I repeat, that any man of Radical views who comes down here to plant cotton will be in constant danger, night and day, unless he holds his tongue. The ministers of the Gospel, of all denominations, the instructors of the youth of the country, the women, and the young men, all hate the North with a degree of intensity that cannot be exaggerated."

Small temptation here to the Northern capitalist! Small welcome to the Northern emigrant! The first condition of prosperity is security; but this is absolutely wanting throughout the unhappy region.

There is also Tennessee, where authentic testimony shows a painful condition of things. I content myself with official documents. It seems that a committee was appointed to consider what could be done to arrest crimes and disorders in this State. Addressing Governor Brownlow, they remark:—

"In the discharge of this duty, we would respectfully and earnestly call the attention of your Excellency to the many dreadful crimes that are becoming so common, not only in and immediately around the capital of the State, but *over the whole country*.

"Quiet and peaceful citizens are met on our most public highways and robbed of their money and property, often cruelly beaten and abused, and in many cases murdered outright. This state of things is not only greatly injurious to the business of the country, but shocking to all sincere advocates of law and order, and to humanity itself.

"We, therefore, with the earnest desire to see security restored to life and property, and the majesty of law reasserted, appeal to your Excellency, who are the chief repre-

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sentative of power in the State, to exercise your power, and give the weight of your great influence to correct these sore evils, of which *the whole country* so justly complain."

The Governor communicated this paper to the Legislature by the following message.

"STATE OF TENNESSEE.

"EXECUTIVE DEPARTMENT,
NASHVILLE, November 22, 1865.

"*Gentlemen of the Legislature:* The reputation being acquired by Nashville, the capital of your State and the great commercial emporium of Middle Tennessee, is humiliating to every friend of law and order. Murders, robberies, and burglaries are the order of the day. No man is safe, day or night, within a circuit around Nashville whose radius is eight or ten miles. The most of these outrages grow out of the abundant use of intoxicating spirits, connected with those gambling hells to be found in full blast on every street in the city. The same may be said, to a considerable extent, of all the larger cities and towns in the State. Life and property must be protected, or the country will go to ruin. I therefore call upon you, most respectfully, but earnestly, by prompt and decisive legislation, to remedy this growing and alarming evil. Should you fail to apply the necessary remedy, my next appeal will be made to Major-General Thomas to close up all these dens of wickedness, so prolific of fights, murders, and robberies of every description. The Sabbath is violated, the sanctuary of the Lord is ruthlessly invaded, and ladies and gentlemen are insulted at every corner and on every highway. Again I appeal to you, Gentlemen, to relieve the suffering people from this outrageous condition of affairs.

"W. G. BROWNLOW."[1]

[1] Senate Journal, 1865 - 66, p. 151.

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I add a few sentences from a Tennessee paper, "The Southern Loyalist."

"Do the authorities at Washington realize the fact that there is very great danger of wide-spread anarchy and bloodshed? Do they realize that it is the supineness and imbecility, or worse, with which the Freedmen's Bureau has been conducted at this point, that is the cause of danger, and, it may be, of much bloodshed? God knows we speak in all sincerity, and we believe we speak the sentiment of nine tenths of the loyal men of Memphis.

"When colored men have remonstrated against injustice, — against the very discriminations against freedmen that the War Department declared should not exist, — they have been told, 'If you damned niggers think I am going to give you any rights that you had not under the old State laws, you are damnably mistaken.' This may not be exactly literal, but it is very nearly so. When colored people have asked for wages hardly earned in the cotton-field, but not paid by rascally employers, they have been in very many cases told to go about their business, or left to get their claims as they could."

Such is Tennessee, the most advanced of the States claiming recognition in the government of the country. Besides this testimony, there is other derived from its own statute-book. Tennessee refuses to the colored citizen his right at the ballot-box, and even his right of testimony in court. I quote from the ignoble statute.

"A negro, mulatto, *Indian*, or person of mixed blood descended from negro or Indian ancestors, to the third generation inclusive, though one ancestor of each generation may have been a white person, whether bond or free, is incapable of being a witness in any cause, civil or criminal, except for or against each other." [1]

[1] Code of Tennessee, § 3808.

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I say nothing of Florida and Arkansas, for the special testimony which has come to me with regard to these States is not at hand. But it is not needed. The same tragical report proceeds from these States also. But, even without any report, all this must be inferred. How could it be otherwise? Abandoned to themselves, with unchecked power, ancient slave-masters naturally continue the barbarism in which they have so long excelled.

Mr. President, I bring this plain story to a close. I regret that I have been constrained to present it. I wish it were otherwise. But I should fail in duty, did I fail to speak. Not in anger, not in vengeance, not in harshness, have I spoken, but solemnly, carefully, for the sake of my country and humanity, that peace and reconciliation may again prevail. I have spoken especially for the loyal citizens now trodden down by Rebel power, and without representation on this floor. Would that my voice could help them to security and justice! I can only state the case. It is for you to decide. It is for you to determine how long these things shall continue to shock mankind. You have before you the actual condition of the Rebel region. You have heard the terrible testimony. The blood curdles at the thought of such enormities, and especially at the thought that the poor freedmen, to whom we owe protection, are left to the unrestrained will of such a people, smarting with defeat, and ready to wreak vengeance upon these representatives of a true loyalty. In the name of God, let us protect them. Insist upon guaranties. Pass the bill now under consideration,—pass any bill,—but do not let this crying injustice rage any lon-

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ger. An avenging God cannot sleep while such things find countenance. If you are not ready to be the Moses of an oppressed people, do not become its Pharaoh.

Mr. Saulsbury, of Delaware, followed Mr. Sumner. Then came Mr. Cowan, of Pennsylvania, who said he was "not disposed to allow the speech of the honorable Senator from Massachusetts to go to the country without a very brief reply. If that speech be true, and if it be a correct picture of the South, then God help us! then this Republic, this Union, is at an end." He then vindicated President Johnson and General Grant against the charge of "whitewashing," quoting passages from them. In the course of his speech, he said: —

"If the honorable Senator from Massachusetts, and those who think with him, desire that these people should have the right of suffrage, why not say so broadly?"

MR. SUMNER. I do say so.

MR. COWAN. Very well; that is so much that is clear. Make it broadly; we may differ from him, but the people will decide.

Here again was issue joined on the great political question which awaited judgment.

The debate continued another day, but after that Mr. Wilson's bill was never resumed. The object proposed was accomplished by other measures.

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THE WHITES *vs.* COLORED SUFFRAGE IN THE DISTRICT OF COLUMBIA.

REMARKS IN THE SENATE, ON PRESENTING A PETITION FROM CITIZENS OF THE DISTRICT, DECEMBER 21, 1865.

I OFFER a petition of citizens of the District of Columbia, similar to petitions presented by me yesterday, calling upon Congress to provide irreversible guaranties in the work of Reconstruction, so that there shall be such security for the future, and, among such guaranties, proposing the enfranchisement of the colored race.

Sir, I am glad to present this petition from citizens of the District, because it shows that there are good people here who are not entirely indifferent to the great cause of Equal Rights. I am more disposed to make this remark because I see notice of a public meeting of whites here in the hope of arresting this cause. The whites can meet, if they please, and such a meeting, called under such auspices, may vote to continue their unjust pretensions; but any vote by them will be, under the circumstances, little better than an absurdity. The whites of the District of Columbia, in respect to the colored people, are no better than squatters, and those who for generations have squatted on the rights of others do not quietly give up. But it is our duty to dispossess them. Hereafter nobody should be allowed to squat on the rights of others, civil or political.

I move the reference of this petition to the Joint Committee on Reconstruction.

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PROTECTION OF THE NATIONAL DEBT, AND REJECTION OF EVERY REBEL DEBT.

CONSTITUTIONAL AMENDMENT IN THE SENATE, JANUARY 5, 1866.

MR. SUMNER asked, and by unanimous consent obtained, leave to bring in the following joint resolution, which was read twice, referred to the Committee on the Judiciary, and ordered to be printed.

JOINT RESOLUTION proposing an Amendment to the Constitution of the United States for the protection of the National Debt and the rejection of any Rebel Debt.

RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring,) That the following Article be proposed to the Legislatures of the several States as an Amendment to the Constitution of the United States, which, when ratified by three fourths of such Legislatures, shall be valid to all intents and purposes as part of the Constitution, namely:—

ARTICLE —.

SECTION 1. The national debt is hereby declared to be of paramount obligation, to which the faith of the nation is pledged; and Congress shall not, at any time, do anything, directly or indirectly, to impair this obligation in any part, but shall in all ways maintain it in full force and virtue.

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SECTION 2. Debts and liabilities incurred in aid of rebellion are without any just consideration, and void; and no tax, duty, or impost shall be laid, nor shall any appropriation of money be made by the United States, or by any one of the States, or by any county, town, or corporation therein, for the payment of any such debt or liability, or any part thereof.

June 20th, Mr. Trumbull, of Illinois, from the Committee on the Judiciary, reported this to the Senate, with the recommendation that it be indefinitely postponed, and it was so postponed. Meanwhile both Houses had adopted the Fourteenth Constitutional Amendment, reported by the Joint Select Committee on Reconstruction, which contains a kindred proposition.

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KIDNAPPING OF FREEDMEN.

REMARKS IN THE SENATE, ON A RESOLUTION OF INQUIRY, JANUARY 9, 1866.

JANUARY 9th, Mr. Sumner offered the following resolution: —

"Whereas it is reported that persons declared free by the Proclamation of Emancipation and by the recent Amendment of the Constitution are now kidnapped and transported to Cuba and Brazil, to be held as slaves, and that in this way a new slave-trade has been commenced on our southern coast: Therefore,

"*Resolved*, That the Committee on the Judiciary be directed to inquire if any further legislation is needed to prevent the kidnapping of freedmen and the revival of the slave-trade on our southern coast."

The Senate proceeded to its consideration, when Mr. Sumner explained it.

BEFORE the vote is taken, I desire to state some of the information that has come to my possession. For instance, here is a letter from Alabama, from which I will read a short extract.

"Another big trade is going on, — that of running negroes to Cuba and Brazil. They are running through the country, dressed in Yankee clothes, hiring men, giving them any price they ask, to make turpentine on the bay, sometimes on the rivers, sometimes to make sugar. They get them on the cars. Of course the negro don't know where he is going. They get him to the bay, and tell him to go on the steamer to go around the coast, and away goes poor Cuffee to slavery again. They are just cleaning out this section of the coun-

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try of the likeliest men and women in it. Federal officers are mixed up in it, too."

MR. JOHNSON [of Maryland]. Who writes the letter? Give the name of the writer.

MR. SUMNER. It is from a person in Alabama, whose name I am requested not to communicate; but the writer is well known to members of the other House. I have also a letter from the District Judge of Florida, — his name is familiar, and will be found in the official lists of the country, — communicating a letter received from a person well known to him, and for whom he vouches, in Florida, dated December 14, 1865, from which I read a brief extract.

"I am advised that certain parties here intend to make a business of importing negroes into Cuba. It is said that there have gone two vessel-loads of them already. Titus & Co. have bought a steamer for the ostensible purpose of carrying fish from Indian River to Charleston, but most people think that his will be carried the other way. There have been more gunboats ordered down in that region to look out for the fishmongers."

Here are two letters from different States, Alabama and Florida. Add also verbal communications received during the last week from Texas, from Louisiana, and from Mississippi, three other States, all to the same effect, that in each of those States a system of kidnapping has already been commenced, and a new slave-trade started on that coast. I do not know that the laws on our statute-book are sufficient to meet this untold enormity. I desire that our Committee, in which we repose such confidence, should apply themselves to it, and see if there is any remedy for this

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terrible crime. I desire, also, that every branch of the Government should do its duty in this business: that the Department of State should address all its agents in Cuba and in Brazil, requiring them to look after the liberty of these people, to which we are pledged; that the Navy Department should forward proper instructions to our cruisers; that the War Department should send proper instructions to our troops in that region; and that the President himself should take notice of this unexpected enormity of outrage, and see to it that everything possible is done to arrest it.

Mr. Davis, of Kentucky, thought it "altogether probable that the Yankees have reopened the slave-trade."

The resolution was adopted.

February 7th, Mr. Clark, of New Hampshire, from the Judiciary Committee, reported "A Bill to prevent and punish Kidnapping," which he stated was upon a resolution introduced by Mr. Sumner. February 15th, the Senate proceeded to its consideration, and it passed that body.

May 18th, the bill passed the House of Representatives, and, May 21st, it was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 50.

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THE LATE HENRY WINTER DAVIS.

ARTICLE IN THE NEW YORK INDEPENDENT, JANUARY 11, 1866.

THE death of Henry Winter Davis at this moment is a national calamity. His rare powers were in their perfect prime, and he had dedicated all to his country. At this crisis, when the best statesmanship, inspired by the best courage, is so much needed, it is hard to part with him.

He was born at Annapolis, Maryland, August 16, 1817; was a Representative of Baltimore in the Thirty-Fourth, Thirty-Fifth, Thirty-Sixth, and Thirty-Eighth Congresses; died in Baltimore, December 30, 1865. His career in Congress made him famous.

Nature had done much for this remarkable man. Elegant in person, elastic in step, and winning in manner, he arrested the attention of all who saw him, and when he spoke, the first impressions were confirmed. He was rapid and direct. He went straight to the point. He abounded in ideas. Language lent her charms. Among the living orators of the country he had few peers. Professional studies and political experience added to his powers. Had he lived, I know not what height he might have reached. Never before had he been so completely master of himself, and never before did he see so clear and glorious a line of duty. As the occasion was vast, so I doubt not would have

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been his efforts. He looked to nothing less than the complete enfranchisement of his country, and the redemption of all the promises of our fathers in the Declaration of Independence. In this cause he was a leader.

In a recent publication[1] he had touched this great question to the quick, when he said that a State which denied the elective franchise to a considerable portion of its citizens could not be considered "a republican government," and he earnestly insisted that all such States should be reformed. He was right. All honor to the champion! Alas that he is not here to help in the battle now at hand! With what force and beauty, with what intensity and eloquence, he would have illustrated the congenial theme!

He was zealous, and, like all zealous men, when great questions are in issue, sometimes gave offence. It is hard to strike strong blows without leaving bruises. It is hard to restrain the rage of a generous indignation so that it will not seem severe. There are times when justice is severity. There are times when gentleness will not do. Falkland, in England, and Barnave, in France, were gentle in nature. Honor them for their virtues, but do not expect everybody to carry into the deadly controversy with Slavery that softness which must surely fail. Sterner stuff is needed. Fox had a heart which overflowed with human kindness, like that of our friend; but when duty called, he was terrible in debate. Words boiled and bubbled from his wrought soul, and he did not hesitate to call things by their

[1] The Necessity of Universal Suffrage in Reconstruction; Letter to the Editor of the New York *Nation*, October, 1865: Speeches and Addresses, pp. 585–596.

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right names. On one occasion this great parliamentary orator exclaimed: "I state it to be my firm opinion that there is not one fact asserted in his Majesty's speech which is not false, not one assertion or insinuation which is not unfounded."[1] On another occasion he said, in words which I seem almost to hear from the lips of the late Representative of Baltimore: "Oh for the good old parliamentary word *jealousy*, instead of its modern substitute, *confidence!*" This was the exclamation of Charles James Fox. It embodies the spirit of Henry Winter Davis. There were things he could not bear. His warm nature glowed at the thought of wrong or usurpation; nor could he check the currents of his soul, even if they threatened to dash against persons powerful in place or influence. A President like Abraham Lincoln was not above his honest, fearless criticism.

His country owes much to him. Living in a State which panted with the throes of the Rebellion, and surrounded by a disloyal population, he was from the beginning austere in patriotism. He made no compromises. He stood by the flag at all hazards. And as the conflict deepened, he was among the foremost to see that Slavery was the great Rebel. Against Slavery he struck. He had the inexpressible satisfaction to witness the first stages of its overthrow, and he was girding himself for the final battle with the transcendent offender under the new form it assumed. In striking against Slavery, he set an example to his fellow-citizens everywhere. If he, whose home was in a Slave State, and whose friends were slave-masters, could strike such

[1] Speech in the House of Commons, on the Address of Thanks, December 13, 1792: Hansard's Parliamentary History, Vol. XXX. col. 13.

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blows, it was hard to see how citizens of other places, where Slavery did not prevail, could hesitate. Hereafter, when recent events are recorded in faithful annals, his name will be mentioned proudly and gratefully.

There is one community that will cherish his memory with especial reverence. It is his native State of Maryland. Among all the sons she has given to the country, there is none who can be named before him. I do not forget William Pinkney, the finished lawyer, or Charles Carroll, the signer of the Declaration of Independence; but there is nothing in the career of either of these to evince superiority over that of Henry Winter Davis. Hereafter, when Maryland is fully redeemed, and a happy people rejoices in all the manifold blessings secured, then will hearts throb and eyes glisten at the mention of this noble name. Better for his memory than any triumph of genius at the bar will be his devoted championship of Human Freedom. Maryland may not now be ready to do fit honor to her departed son; but the time cannot be long postponed. Her advance in civilization may well be measured by sympathy with his name.

POSTSCRIPT.

SINCE writing this tribute to an heroic spirit, I have received a journal from Baltimore, published by colored persons, which contains his best eulogy. Such praise is more than any other praise, for it comes from neighbors and wards who knew him well, and it is the voice of that oppressed race he had served so faithfully. Better than any official order of mourning are these artless, feeling words:—

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"We are sorely grieved to chronicle the death of so great and good a man as Hon. Henry Winter Davis, who departed this life on Saturday, 30th ult., 1865, after a short illness of about three days. Mr. Davis was an accomplished gentleman, a true patriot, and a finished statesman. He was true to his country, and *a tried friend* to the colored people, — *never* faltering in the time of need. In Congress he fought as a hero for our people, and at home he labored assiduously for the bondman, and espoused the cause of *Liberty, Justice, and Truth*, up to the time of his death. The memory of Henry Winter Davis should live in every colored American's heart for ages to come, and *all* loyal citizens should give his very interesting family their full sympathy; for Henry Winter Davis, at *his own* peril, stood invincible for his country, knew no flag but the flag of *free* America, even when his nearest friend would impeach him for his acts, and almost threaten his life. Henry Winter Davis was *firm*, defying all prejudiced parties to dare advance; but he was such a statesman and elocutionist, he kept them at bay, until God, in His own time, has seen it His pleasure to remove him from our midst; and we humble beings can do nothing but trust that God, in His all-wise and tender mercy, may raise erelong another Henry Winter Davis."

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DISFRANCHISEMENT INCONSISTENT WITH REPUBLICAN GOVERNMENT.

REMARKS IN THE SENATE, ON THE CREDENTIALS OF A SENATOR FROM FLORIDA, JANUARY 19, 1866.

JANUARY 19th, Mr. Doolittle, of Wisconsin, presented the credentials of Hon. William Marvin as Senator of Florida. Mr. Sumner, seizing the occasion to declare what he thought an essential element of republican government to be observed in Reconstruction, said: —

I HAVE no desire to discuss the question arising on the presentation of these credentials, and I may say that there are reasons for the expression of personal respect toward the gentleman who appears as Senator from Florida. In many particulars — not in all, unhappily — he has done well where he was placed. I say, unhappily not in all particulars; for no person can read his speeches and say that in everything he has done what a governor of one of those States at this time should do. But I have no desire to discuss his case.

The Senator has alluded to the actual condition of Florida. I also ask attention to the actual condition of things there, as represented by thoroughly competent witnesses, whose character is vouched by the first citizens of that State.

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Mr. Sumner here read two communications, mentioning that four fifths of the Legislature were Rebel officers, and setting forth the programme of the Rebel States hostile to Reconstruction, and declaring that the only hope of Union men was in Congress. He then said: —

There, Sir, is testimony direct from Florida. Besides, we have the Constitution which the recent pretended Convention has put forward, — a Constitution which, after recognizing the abolition of Slavery, and therefore the citizenship of those once slaves, proceeds to decree their disfranchisement; and Senators are expected to receive this document as creating a republican form of government, — a Constitution which begins by the denial of equality to nearly one half its citizens! The question is entirely changed since the abolition of Slavery, for all are now citizens; and I insist, and at a proper time shall argue the question, that no State, where the government has lapsed, can be recognized as republican in form, while disfranchising any considerable portion of its citizens, especially if it founds any right, immunity, or privilege on color.

The credentials were laid on the table, and never afterwards considered.

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IMPANELLING OF JURIES, AND TRIAL OF JEFFERSON DAVIS.

REMARKS IN THE SENATE, ON A BILL REMOVING CERTAIN OBJECTIONS TO JURORS, JANUARY 22, 1866.

MR. CLARK, of New Hampshire, called up a bill, reported by the Judiciary Committee, "in relation to the qualifications of jurors and to writs of error in certain cases." The first section removed the objection to jurors serving in certain cases by reason of having formed or expressed an opinion founded upon common notoriety, public rumor, or statements in public journals. The other section provided a writ of error on questions of law, where the punishment was death.

Mr. Sumner remarked: —

I SEE no objection to the second section. Here I agree with the Senator from New Hampshire. I am not so sure about the first section. There seem to me two objections to it. Whether they are sufficiently strong to justify the rejection of the bill will be for the Senate to determine. I simply call attention to them.

The first is, that it positively sets aside what, down to this day, on the ruling of the highest magistrate of our country, has been the law in impanelling juries. To this the Senator aptly replies, that it is important to obtain uniformity of practice in the United States courts. There I agree with him. If the proposition involved nothing else, I should not venture even a suggestion with regard to it; but it reaches further. It sets aside

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what my friend, the learned Senator from Maryland [Mr. JOHNSON] knows well was the decision of Chief Justice Marshall, and what has been also the practice in many States of the Union. It is the practice in my own State. It is the practice also in the District of Columbia. Against that practice I can venture only with a certain hesitation.

Then comes another consideration of greater importance. So far as I comprehend the special bearing of this provision, it is to meet an actual case of unprecedented historical importance; it is to prepare the way for the trial of that grandest criminal in the world's history, now in the custody of the National Government. Sir, that trial should be approached carefully, most discreetly, and I humbly submit, unless reasons to the contrary are found of the strongest character, with absolute reference to the existing law of the land. I shrink from any change in the law to meet an individual case, even though of transcendent importance, like that to which I refer. Indeed, the very importance of the case, and especially its political character, puts us on our guard.

I would also ask whether there is not in the proposition something of an *ex post facto* character. I am not going to argue against the power of Congress to make changes in modes of procedure and of trial after the crime has been perpetrated; but I cannot doubt, that, in view of the positive limitation of the Constitution, it is a very doubtful course to enter upon.

Mr. Davis, of Kentucky, who was not disposed to agree with Mr. Sumner, said: "I certainly very heartily approve of the opinions and sentiments expressed by the Senator from Massachusetts."

The bill was postponed, and allowed to drop.

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CARRYING OUT THE GUARANTY OF REPUBLICAN GOVERNMENT,

AND ENFORCEMENT OF THE PROHIBITION OF SLAVERY.

JOINT RESOLUTION IN THE SENATE, FEBRUARY 2, 1866.

THE following joint resolution, introduced February 2d, is a modification of a bill introduced at the beginning of the session.[1]

JOINT RESOLUTION carrying out the guaranty of a Republican Form of Government in the Constitution of the United States, and enforcing the Constitutional Amendment for the Prohibition of Slavery.

WHEREAS it is provided in the Constitution, that the United States shall guaranty to every State in this Union a republican form of government;

And whereas, by reason of the failure of certain States to maintain governments which Congress can recognize, it has become the duty of the United States, standing in the place of guarantor where the principal has made a lapse, to secure to such States, according to the requirement of the guaranty, governments republican in form;

And whereas, further, it is provided in a recent Constitutional Amendment, that Congress may "enforce" the prohibition of Slavery by "appropriate legislation,"

[1] *Ante*, p. 14.

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and it is important to this end that all relics of Slavery should be removed, including all distinction of rights on account of color:

Now, therefore, to carry out the guaranty of a republican form of government, and to enforce the prohibition of Slavery,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in all States lately declared to be in rebellion there shall be no oligarchy, aristocracy, caste, or monopoly invested with peculiar privileges or powers, and there shall be no denial of rights, civil or political, on account of race or color; but all persons shall be equal before the law, whether in the court-room or at the ballot-box. And this statute, made in pursuance of the Constitution, shall be the supreme law of the land, anything in the Constitution or laws of any such State to the contrary notwithstanding.

The joint resolution was printed and laid on the table. Mr. Sumner gave notice that at the proper time he should move it as a counter proposition to the resolution of the House of Representatives proposing a Constitutional Amendment.[1]

[1] *Post*, p. 128.

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THE EQUAL RIGHTS OF ALL:

THE GREAT GUARANTY AND PRESENT NECESSITY, FOR THE SAKE OF SECURITY, AND TO MAINTAIN A REPUBLICAN GOVERNMENT.

SPEECH IN THE SENATE, ON THE PROPOSED AMENDMENT OF THE CONSTITUTION FIXING THE BASIS OF REPRESENTATION, FEBRUARY 5 AND 6, 1866. WITH APPENDIX.

Taxation without representation is Tyranny. — THE REVOLUTIONARY FATHERS.

> Remember, O my friends, the laws, the rights,
> The generous plan of power delivered down
> From age to age by your renowned forefathers,
> So dearly bought, the price of so much blood:
> Oh, let it never perish in your hands!"
>
> ADDISON, *Cato*, Act III. Scene 5.

But if any among you thinks that Philip will maintain his power by having occupied forts and havens and the like, this is a mistake. . . . . Impossible is it, impossible, Athenians, to acquire a solid power by injustice and perjury and falsehood. Such things last for once, or for a short period; maybe, they blossom fairly with hope; but in time they are discovered and drop away. As a house, a ship, or the like, ought to have the lower parts firmest, so in human conduct, I ween, the principle and foundation should be just and true. — DEMOSTHENES, *Second Olynthiac*, tr. Kennedy.

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Yet ye say, The way of the Lord is not equal. Hear now, O house of Israel! Is not my way equal? are not your ways unequal? — EZEKIEL, xviii. 25.

'T were better, O my son,
To cultivate Equality, who joins
Friends, cities, heroes in one steadfast league;
For by the laws of Nature through the world
Equality was established: . . . .
Equality, among the human race,
Measures and weights and numbers hath ordained.
EURIPIDES, *The Phœnician Damsels*, tr. Wodhull.

That all might free and equal all remain.
LUCAN, *Pharsalia*, tr. Rowe, Book IX. 336.

Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens, and let them vote. — GOUVERNEUR MORRIS: *Debates in the Federal Convention*, August 8, 1787: Madison Papers, Vol. III. p. 1264.

He took his ground carefully, and propounded only what he felt sure that Hardy himself would at once accept, — what no man of any worth could possibly take exception to. He meant much more, he said, than this, but for the present purpose it would be enough for him to say, that, whatever else it might mean, *Democracy in his mouth always meant that every man should have a share in the government of his country.* — HUGHES, *Tom Brown at Oxford*, Vol. II. Chap. XIX.

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THE Equal Rights of the colored race occupied the constant attention of Congress in different forms. One measure was known as the Civil Rights Bill, securing the right to sue and testify in court, introduced by Mr. Trumbull January 5, and passed April 9, 1866. Others were intended to secure suffrage for colored citizens in the District of Columbia and generally in the Rebel States. The efforts of Mr. Sumner were applicable to all these measures. He insisted always upon the equal title of all to rights of white citizens, whether civil or political, and he wished to act directly. Not doubting the plenary powers of Congress to provide for the equal rights of all, political as well as civil, especially since the Constitutional Amendment prohibiting Slavery, he pressed action by "appropriate legislation."

Meanwhile the House of Representatives undertook to meet the Suffrage question indirectly, and by a proposition for an Amendment of the Constitution, reported by Hon. Thaddeus Stevens from the Joint Committee on Reconstruction. Proceeding originally from Hon. James G. Blaine, a Representative from Maine, afterwards Speaker, it was known familiarly as "the Blaine Amendment." After elaborate discussion, the joint resolution containing the Amendment was adopted by the House, January 31st, — Yeas 120, Nays 46, — in the following terms: —

"Representatives shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed: *Provided*, That, whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons therein of such race or color shall be excluded from the basis of representation."

Mr. Fessenden, of Maine, who was the Senate Chairman of the Joint Committee on Reconstruction, promptly gave notice that he should call for its consideration in the Senate February 5th. This opened the whole subject in all its branches, and Mr. Sumner seized the earliest opportunity to discuss it, beginning the important debate. His speech, after asserting the equal rights of all, vindicated the plenary powers of Congress, especially under the clause requiring the United States to

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guaranty a republican form of government. Though made on the Constitutional Amendment, it was equally applicable to Mr. Trumbull's Civil Rights Bill, then pending, as also to the Bill for Enfranchisement in the District of Columbia, and to all measures of Reconstruction.

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SPEECH.

MR. PRESIDENT, — I begin by expressing my acknowledgments to the Senator from Maine, who yields the floor to-day, and also my sincere regret that anything should interfere with the opening of this debate by him. It is his right, and I enter upon it now only by his indulgence.

I am not insensible to the responsibility assumed in setting myself against a proposition already adopted in the other House, and having the recommendation of a Committee to which the country looks with such just expectation, and to which, let me say, I look with so much trust. But, after careful reflection, I do not feel that I can do otherwise. Knowing, as I do, the eminent character of the Committee, its intelligence, its patriotism, and the moral instincts by which it is moved, I am at a loss to understand the origin of an attempt which seems to me nothing else than another compromise of Human Rights, as if the country had not already paid enough in costly treasure and more costly blood for such compromises in the past. I had hoped the day of compromise with wrong had gone forever. Ample experience shows that it is the least practical mode of settling questions involving moral principle. A moral principle cannot be compromised.

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Here are important words of the Amendment: —

"*Provided*, That, whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons therein of such race or color shall be excluded from the basis of representation."

I may be mistaken, Sir, but I think it difficult to read this proposition without being painfully impressed by the discord and defilement it will introduce into the National Constitution, having among specific objects the guaranty of a republican form of government. The discord appears on the face. The defilement is none the less apparent. Go back, if you please, to the adoption of the Constitution, and you will gratefully acknowledge that the finest saying of the times was when Madison, evidently inspired by the Declaration of Independence, and determined to keep the Constitution in harmony with it, insisted, in well-known words, that it was "WRONG to admit in the Constitution the idea that there could be property in men."[1] Of all that has come to us from that historic Convention, where Washington sat as President, and Franklin and Hamilton sat as members, there is nothing with so much of imperishable charm. It was wrong to admit in the Constitution the idea that man could hold property in man. In this spirit the Constitution was framed. This offensive idea was not admitted. The text, at least, was kept blameless. And now, after generations have passed, surrounded by the light of Christian truth and in the full blaze of Human Freedom, it is proposed to admit in the Constitution a twin idea of Inequality in Rights, and thus openly set at nought the first prin-

[1] Debates in the Federal Convention, August 25, 1787: Madison Papers, Vol. III. pp. 1429, 1430.

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ciples of the Declaration of Independence, and the guaranty of a republican government itself, while you blot out a whole race politically. For some time we have been carefully expunging from the statute-book the word "white," and now it is proposed to insert in the Constitution itself a distinction of color. An amendment, according to the dictionaries, is "an improvement," "a change for the better." Surely the present proposition is an amendment which, like the crab, goes backward.

Such is the appearance, when you regard it merely in form, without penetrating its substance; but here it is none the less offensive. The case is plain. Still among us are four million citizens robbed of all share in the government of a common country, while, at the same time, according to their means, they are taxed, directly and indirectly, for the support of the Government. Nobody will question the statement. And this barefaced tyranny of taxation without representation it is now proposed to recognize as not inconsistent with fundamental right and the guaranty of a republican government. Instead of blasting it, you go forward to embrace it as an element of political power.

If you expect to induce the recent slave-master to confer suffrage without distinction of color, you will find the proposition a delusion and a snare. He will do no such thing. Even the bribe offered cannot tempt him. If, on the other hand, you expect to accomplish a reduction of his political power, permit me to say that success is more than doubtful, while the means employed are unworthy. Tricks and evasions are possible, and the cunning slave-master will drive his coach and six through your Amendment, stuffed with all

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his representatives. Should he cheat you, it will only be a proper return for the endeavor on your part to circumvent him at the expense of fellow-citizens to whom you are bound by every obligation of public faith.

I know not if others will see this uncertainty as I see it; but there are two practical consequences, having direct influence on the times, which all must discern as following at once from the adoption of the so-called Amendment. In the first place, it will be a present renunciation of all power under the Constitution to apply the remedy for a grievous wrong, when the remedy, even according to your own recent example, is actually in your hands. You have already in this Chamber, only last Friday, decreed civil rights without distinction of color.[1] Who can doubt that by the same title you may decree political rights, also, without distinction of color? But, having the power, it is your duty to exercise it. You cannot evade this duty without becoming partakers in wrong. And this brings me to the second practical consequence that must ensue from the adoption of this proposition. You hand over wards and allies, through whom the Republic has been saved, and therefore our saviours, to the control of vindictive enemies, to be taxed and governed without their own consent; and this you do for a consideration "nominated in the bond," by virtue of which men may do a great wrong, provided they submit, as a *quid pro quo*, to a proportionate abridgment of political power. Who does not admire the Scottish patriot of whom it was said

[1] Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication. It passed the Senate February 2d, and became a law, notwithstanding the veto of President Johnson, April 9th. — *Statutes at Large*, Vol. XIV. p. 27.

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that he "would lose his life readily to *serve* his country, but would not do a base thing to *save* it"?[1] I hope we may act in this spirit. Above all, do not copy the example of Pontius Pilate, who surrendered the Saviour of the World, in whom he found no fault at all, to be scourged and crucified, while he set at large Barabbas, of whom the Gospel says in simple words, "Now Barabbas was a robber."

I speak with sincere deference for cherished friends from whom I differ; but I submit that the time has come, at last, when we should deal directly, and not indirectly, with the great question before us, and when all compromise of Human Rights should cease, and especially there should be no thought of a three-headed compromise, which, after degrading the Constitution, renounces a beneficent power essential to the safety of the Republic, and, lastly, borrowing an example from Pontius Pilate, turns over a whole race to sacrifice. These objections I present briefly on the threshold, without argument, and advance to the main question which must dominate this whole debate. By way of introduction, I send to the Chair a counter proposition, which I wish read. It is entitled "A joint resolution carrying out the guaranty of a republican form of government in the Constitution of the United States, and enforcing the Constitutional Amendment for the prohibition of Slavery."

This was the joint resolution introduced February 2d,[2] in anticipation of this debate, but made applicable "anywhere within the limits of the United States or the jurisdiction thereof." After its reading by the Secretary of the Senate, Mr. Sumner proceeded.

[1] Andrew Fletcher of Saltoun: Characters, prefixed to Political Works, (Glasgow, 1749,) p. viii.

[2] *Ante*, p. 113.

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MR. PRESIDENT,— In opening this great question, I begin by expressing a heartfelt aspiration that the day may soon come, when the States lately in rebellion may be received again into the copartnership of political power and the full fellowship of the Union. But I see too well that it is vain to expect this day, so much longed for, until we have obtained that security for the future which is found only in the Equal Rights of All, at the ballot-box as in the court-room. This is the Great Guaranty without which all other guaranties will fail. This is the sole solution of present troubles and anxieties. This is the only sufficient assurance of peace and reconciliation. To the establishment of this Great Guaranty, as a measure of safety and of justice, I now ask your best attention.

The powers of Congress over this subject are ample as they are beneficent. From four specific fountains they flow, each sufficient, all four swelling into an irresistible current, and tending to one conclusion: first, the necessity of the case, by which, according to analogy of the Territories, disloyal States, having no local government, lapse under the authority of Congress; secondly, the Rights of War, which do not expire or lose their grasp, except with the establishment of all needful guaranties; thirdly, the constitutional injunction to guaranty a republican form of government; and, fourthly, the Constitutional Amendment, by which Congress, in words of peculiar energy, is empowered to "enforce" the abolition of Slavery by "appropriate legislation." According to the proverb of Catholic Europe, all roads lead to Rome; and so do all these powers lead to the jurisdiction of Congress over this whole sub-

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ject. No matter which road you take, you arrive at the same point. The first two have already been discussed exhaustively.[1] The two latter have been considered less, and it is on these that I shall speak especially to-day. I propose, with the permission of the Senate, to show the necessity and duty of exercising the jurisdiction of Congress so as to secure that essential condition of a republican government, the Equal Rights of All. And I put aside, at the outset, the metaphysical question, worthy of schoolmen in the Dark Ages, whether certain States are *in* the Union or *out of* the Union. That is a question of form, and not of substance, — of words only, and not of facts; for the substance is clear, and the facts are unanswerable. All are agreed, according to the authority of President Lincoln, in his latest utterance before his lamented death, that these States have ceased to be in "practical relation with the Union";[2] and this is enough to sustain the jurisdiction of Congress, even without the plain words of the Constitution in two separate texts.

The time has passed for phrases, which have been the chief resource in opposition to a just reconstruction. It is not enough to say "a State cannot secede," "a State cannot get out of the Union," "Louisiana is a State in the Union." These are mere words, having no positive meaning, and improper for this debate. So far as they have meaning, they confound law and fact. It is very obvious that a State may, in point of *law*, be

[1] *Ante*, Vol. VII. p. 493, Our Domestic Relations, Power of Congress over the Rebel States; Vol. IX. p. 437, The National Security and the National Faith. See, also, Vol. VII. p. 1, Rights of Sovereignty and Rights of War.

[2] Speech in Washington, April 11, 1865: McPherson's Political History of the United States during the Rebellion, p. 609.

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still in the list of States, and yet, in point of *fact*, its relations to the Union may have ceased through violence, foreign or domestic. In point of law, no man can commit suicide; but in point of fact, men do. The absurdity of denying that a man has committed suicide, because it is unlawful, is equalled by the kindred absurdity of saying that a State cannot do a certain thing, because it is unlawful. Unhappily, in this world, the fact is not always in conformity with the law.

Therefore I put aside all fine-spun theories running into the metaphysics of Constitutional Law. All such subtilties are absolutely futile. They must end in nothing. I found myself on existing facts, which are undeniable. Of these I select two.

Whatever may have been the effect of the acts of Secession in point of law, it is plain that *de facto* the Rebel States have ceased to take any part in the National Government. All loyal government in those States has been *de facto* subverted. They are all without magistrates or officers bound by oath to support the National Constitution according to its requirement, so that *de facto* there are no magistrates or officers of the Union in these States; nor are there any *de facto* Senators or Representatives in Congress from those States. Such are unquestionable facts, all of which concentre in the great unquestionable *fact*, that for the time being there are no State Governments in these States which the National Government can recognize as such.

There is another fact equally unquestionable. It is that the Rebel States have been *de facto* in war against the National Government. Armies have been mustered, battles have been fought, and the whole country has been convulsed by this war. An immense national

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debt, mourning families, widows and orphans, attest this terrible fact.

Everything has a natural consequence, and the consequence of this condition of things is that necessity which I have announced. These States cannot subsist without legal governments in just correlation with the other States and with the Nation.

Necessity and duty commingle. If what is necessary is not always according to duty, surely duty is always a necessity. On the present occasion they unite in one voice for the Great Guaranty. It is at once necessity and duty. Glancing at the promises of the Fathers, I shall exhibit, —

First, the overruling necessity of the times;

And, *secondly*, the positive mandate of the Constitution, compelling us to guaranty "a republican form of government," and thus to determine what is meant by this requirement; all of which has been fortified by continuing Rights of War, and by the Constitutional Amendment authorizing Congress to enforce the abolition of Slavery.

In the life of a nation, as in that of an individual, there are moments when outstanding promises must be performed under peril of ruin and dishonor. Such is the present moment in the life of the Republic. Sacred promises, beginning with our history, are yet unperformed, although the hour has sounded when continued failure on our part will open the door to a long train of woes. And there are yet other promises, recently made, for the national defence against a wicked rebellion, which, like those of earlier date, are also unperformed. But the latter are all included in the former;

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so that our whole present duty centres in the performance of sacred promises coëval with the national life.

Our fathers solemnly announced the Equal Rights of all men, and that government had no just foundation except in the consent of the governed; and to the support of the Declaration heralding these self-evident truths they pledged their lives, their fortunes, and their sacred honor. Looking at this Declaration now, it is chiefly memorable for the promises it made. Mighty words! Fit utterance for the infant giant then born! Fit device for the great Republic taking its place in the family of kings! Fit lesson for mankind! And now the moment has come when these vows must be fulfilled to the letter. In securing the Equal Rights of the freedman, and his participation in the Government which he is taxed to support, we shall perform the early promises of the Fathers, and at the same time supplementary promises only recently made to the freedman as the condition of alliance and aid against the Rebellion. Failure here is moral and political bankruptcy. It is repudiation of moral and political duties, ending in repudiation of the financial obligations. So are duties to the national freedman linked with obligations to the national creditor, that you cannot repudiate the former without impairing the latter. Whoever disowns any of the promises of the Republic leads the way in repudiation.

But you cannot be thus guilty. Even if indifferent to the vows of the Fathers, necessity, in harmony with the plain injunction of the Constitution, will constrain you. On this there can be no doubt. You must perform these promises; and this brings me to the overruling necessity of the times.

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I.

NECESSITY is a peremptory instructor. It gives the law which no man can disregard. It will not hearken to apology or postponement. With a voice of command it insists that its behests shall be obeyed. And now this very necessity speaks with familiar tones.

Twice already, since Rebel Slavery rose against the Republic, it has spoken, insisting, first, that the slaves should be declared free, and, secondly, that muskets should be put into their hands for the common defence. Yielding to necessity, these two things were done. Reason, humanity, justice were powerless; but necessity was irresistible. And the result testifies how wisely the Republic acted. Without Emancipation, followed by arming the slaves, Rebel Slavery would not have been overcome. With these, victory was easy.

At last the same necessity, which insisted first upon Emancipation and then upon arming the slaves, insists with the same unanswerable force upon admission of the freedman to complete equality before the law, so that there shall be no ban of color in court-room or at the ballot-box, and government shall be fixed on its only rightful foundation, the consent of the governed. Reason, humanity, and justice, all of which are clear for the admission of the freedman, may fail to move you; but you must yield to necessity, now requiring these promises to be performed.

The demand I make stands on necessity. You must grant it, or you will peril the peace of the Republic, and postpone indefinitely the great day of security and reconciliation. Therefore, in the name of that national safety which is the supreme law, I begin my appeal.

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Whatever is required for the national safety is constitutional. Not only it *may* be done, but it *must* be done. Not to do it is to fail in duty. The Republic must be saved.

When I speak of necessity, I mean that overruling compulsion which cannot be disobeyed. In the present case it is compounded of moral duty and the instinct of self-preservation. The moral duty to perform these promises is plain as the Decalogue. The instinct of self-preservation, impelling us to save the Republic, is in harmony with the requirement of moral duty. In denying justice now, you are not only guilty of grievous wrong, but you expose your country to incalculable calamity. The case is too clear for debate.

The irresistible argument for Emancipation was always twofold, — first, its intrinsic justice, and, secondly, its necessity for the safety of the Republic; all of which was expressed by President Lincoln in the closing words of his great Proclamation: —

"And upon this act, sincerely believed to be *an act of justice warranted by the Constitution upon military necessity*, I invoke the considerate judgment of mankind and the gracious favor of Almighty God."

But the argument for Enfranchisement, which is nothing but the complement of Emancipation, is the same. Enfranchisement is not only intrinsically just, but necessary to the safety of the Republic. There is no reason, point, or argument once urged for Emancipation which may not be urged now for Enfranchisement. I do not err, when I say that Emancipation itself will fail without Enfranchisement.

By Enfranchisement I mean the establishment of the

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Equal Rights of All, so that there shall be no exclusion of any kind, civil or political, founded on color, and the promises of the Fathers shall be fulfilled. Such a measure will be, in the words of President Lincoln, "an act of justice warranted by the Constitution upon military necessity."

As an act of justice, Enfranchisement has a necessity of its own. No individual and no people can afford to be unjust. Such an offence carries a curse, which, sooner or later, must drag its perpetrator to ruin. But here necessity from considerations of justice is completed and intensified by positive requirements of the national safety, plainly involved in the performance of these promises.

Look at the unhappy freedman blasted by the ban of exclusion. He has always been loyal, and now it is he, and not the Rebel master, who pays the penalty. From the nature of the case, he must be discontented, restless, anxious, smarting with sense of wrong and consciousness of rights denied. He does not work as if taken by the hand and made to feel the grasp of friendship. He is idle, thriftless, unproductive. Industry suffers. Cotton does not grow. Commerce does not thrive. Credit fails; nay, it dies before it is born. On the other hand, his Rebel master, with hands still red with the blood of fellow-countrymen, is encouraged in that assumption of superiority which is part of the Barbarism of Slavery; he dominates as in times past; he is exacting as of old; he is harsh, cruel, and vindictive; he makes the unprotected and trembling freedman suffer for the losses and disappointments of the Rebellion; he continues to insult and prostitute the wife and children, who, ceasing to be chattels, have

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not ceased to be dependants; he follows the freedman to by-ways and obscure places, where once again he plays master and asserts his ancient title as lord of the lash. Scenes of savage brutality and blood ensue. All this, which reason foretells, the short experience of a few months already confirms. And all this you sanction, when you leave the freedman despoiled of his rights.

But the freedman, though forbearing and slow to anger, will not always submit to outrage. He will resist. Resistance will be organized. And here begins the terrible war of races foreseen by Jefferson, where God, in all His attributes, has none which can take part with the oppressor. The tragedy of San Domingo will be renewed on a wider theatre, with bloodier incidents. Be warned, I entreat you, by this historic example. It was the denial of rights to colored people, upon successive promises, which caused that fearful insurrection. After various vicissitudes, during which the rights of citizenship were conferred on free people of color and then resumed, the slaves at last rose; and here the soul sickens at the recital. Then came Toussaint l'Ouverture, a black of unmixed blood, who placed himself at the head of his race, showing the genius of war, and the genius of statesmanship also. Under his magnanimous rule the beautiful island began to smile once more: agriculture revived; commerce took a new start; the whites were protected in person and property; and a Constitution was adopted acknowledging the authority of France, but making no distinction of race or color. In an evil hour this policy was reversed by a decree of Napoleon Bonaparte. War revived, and the French army was compelled to succumb. The connection of San Domingo with France

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was broken, and this island became a black republic. All this dreary catalogue of murder, battle, sorrow, and woe began in denial of justice to the colored race. And only recently we have listened to a similar tragedy from Jamaica, thus swelling the terrible testimony. Like causes produce like effects; therefore all this will be ours, if we madly persist in the same denial. The freedmen among us are not unlike the freedmen of San Domingo or Jamaica; they have the same "organs, dimensions, senses, affections, passions," and, above all, the same sense of wrong, and the same revenge.

To avoid insurrection and servile war, big with measureless calamity, and even to obtain the security essential to industry, agriculture, commerce, and the national credit, you must perform the promises of the Republic, originally made by our fathers, and recently renewed by ourselves. But duty done will not only save you from calamity and give you security; it will also prepare the way for the great triumphs of the future, when through assured peace there shall be tranquillity, prosperity, and reconciliation, all of which it is vain to expect without justice.

The freedman must be protected. To this you are solemnly pledged by the Proclamation of President Lincoln, which, after declaring him "free," promises to *maintain* this freedom, not for any limited period, but for all time. But this cannot be, so long as you deny him the shield of *impartial laws*. Let him be heard in court, and let him vote. Let these rights be guarded sacredly. Beyond even the shield of *impartial laws*, he will then have the protection which comes from the consciousness of manhood. Clad in the full panoply of citizenship, he will feel at last that he is a man.

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At present he is only a recent chattel, awaiting your justice to be transmuted into manhood. Would you have him respected in his rights, you must begin by respecting him in your laws. Would you maintain him in freedom, you must begin by maintaining him in the equal rights of citizenship.

And now the national safety is staked on this act of justice. You cannot sacrifice the freedman without endangering the peace of the country and the stability of our institutions. Everything will be kept in jeopardy. The national credit will suffer. Business of all kinds will feel the insecurity. The whole land will gape with volcanic fire, ready to burst forth in fatal flood. The irrepressible conflict will be prolonged. The house will continue divided against itself. From all these things, Good Lord, deliver us! But, under God, there is but one deliverance, and this is through justice.

I have said that the national credit will suffer; but this does not disclose the whole financial calamity. It is idle to suppose that recent rebels, restored to privileges of citizenship, will vote cordially for the national debt incurred in the suppression of their rebellion, or that they will willingly tax themselves for interest on the enormous outlays by which their darling Slavery has been overthrown. The evidence shows them already set against any such contribution. As time advances, and their power is assured, in conjunction with Northern sympathizers, they will openly oppose it; or, if they consent to recognize it, they will impose the condition that the Rebel debt shall be recognized also. All this is inevitable, if you give them the power; it is madness to tempt them. But they will not have the power, if the promises to the

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freedman are performed. Here again justice to the freedman becomes a necessity.

Sometimes it is said that we must not require justice to the freedman, because justice is still denied to the colored citizen in Connecticut and New York. Idle words, of inconceivable utterance! as if the two cases bore any imaginable resemblance! There are rivers in the North and rivers in the South, but who says that on this account the two regions are alike? The denial of justice to the colored citizens in Connecticut and New York is wrong and mean; but it is on so small a scale that it is not perilous to the Republic, nor is it vital to the protection of the colored citizen and the protection of the national creditor. You are moved to Enfranchisement in Connecticut and New York for justice to a few individuals only; but you are moved to it in the Rebel States for justice to multitudes, also to save the Republic, imperilled by injustice on a gigantic scale, and to supply needful protection to the national freedman and the national creditor. From failure on our part, there is in one case little more than shame, while in the other there is positive danger, involving the fate of the national freedman and the national creditor, to whom we are bound by the most solemn ties. To a good man, injustice, even on a small scale, is not tolerable; he feels the necessity of resisting it; but where the victims are counted by millions, this necessity becomes a transcendent duty, quickened and invigorated by all the instincts of self-preservation. Therefore, I say again, for the national safety, redeem these promises of the Fathers, and your own.

It is sometimes asserted that the National Constitution expressly reserves to the States the power of

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determining who shall vote, because it declares that "the electors in each State shall have the *qualifications* requisite for electors of the most numerous branch of the State Legislature." But this assumption proceeds on the fatal error, that, at any time under the Constitution, which makes no distinction of color, there can be any such oligarchical distinction as a "qualification" founded on color. Even assuming that in a period of peace this might be done, yet, beyond all doubt, at the present moment, from the necessity of the case, from the Rights of War, from the Constitutional clause of guaranty, and from the Constitutional Amendment, Congress, by its quadruple powers, is completely authorized to do all it thinks best for the national security and the national faith in the Rebel States. As well question Farragut in the maintop of his steamer, Sherman in his march across Georgia, or Grant in the field before Richmond, as question the authority of Congress in the present crisis. But, if the authority exists, it must be exercised.

II.

AND this brings me to the next form of this necessity and duty, as they appear in the guaranty clause of the Constitution. It is expressly declared that "the United States shall guaranty to every State in this Union a republican form of government." These words, when properly understood, leave no alternative. They speak to us with no uncertain voice. But they must be understood. The Rebel States, while providing constitutional safeguards for property in man, and, ac-

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cording to the vaunt of their Vice-President, making Slavery the corner-stone of the new Government, yet follow our Constitution in the formal guaranty of a republican form of government.[1] Defiantly they assume that Slavery is not inconsistent with such a government. To this degrading assumption we must reply, not only for the national cause, but that republican governments may not suffer.

The magnitude of the question before us is seen in the postulate with which I begin. Assuming that there has been a lapse of government in any State, so as to impose upon the United States the duty of executing this guaranty, then do I insist that it is a bounden duty to see that such State has a "republican form of government," and, in the discharge of this bounden duty, we must declare that a State, which, in the foundation of its government, sets aside "the consent of the governed," which imposes taxation without representation, which discards the principle of Equal Rights, and lodges power exclusively with an Oligarchy, Aristocracy, Caste, or Monopoly, cannot be recognized as a "republican form of government," according to the requirement of American institutions. Even if it may satisfy some definition handed down from antiquity or invented in monarchical Europe, it cannot satisfy the solemn injunction of our Constitution. For this question I now ask a hearing. Nothing in the present debate can equal it in importance. Its correct determination will be an epoch for our country and for mankind.

[1] Constitution of the Confederate States, Art. IV., Sec. 3, Clause 4: Statutes at Large (Richmond, 1864), p. 21. See, also, Appleton's Annual Cyclopædia, 1861, art. *Public Documents*.

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Believe me, Sir, this is no question of theory or abstraction. It is a practical question, which you are summoned to decide. Here is the positive text of the Constitution, and you must affix its meaning. You cannot evade it, you cannot forget it, without abandonment of duty. Others in vision or aspiration have dwelt on the idea of a Republic, and they have been lifted in soul. You must consider it not merely in vision or aspiration, but practically, as legislators, seeking a precise definition, to the end that the constitutional "guaranty" may be performed. Your powers and duties are involved in this definition. The character of the Government founded by our fathers is also involved in it.

There is another consideration not to be forgotten. In affixing the proper meaning to the text, and determining what is a "republican form of government," you act as a court in the last resort, from which there is no appeal. You are sole and exclusive judges. You may decide as you please. Rarely in history has such an opportunity been offered to the statesman. You may raise the name of Republic to majestic heights of justice and truth, or you may let it drag low down in the depths of wrong and falsehood. You may make it fulfil the idea of John Milton, when he said that "a commonwealth ought to be but as one huge Christian personage, one mighty growth and stature of an honest man, as big and compact in virtue as in body";[1] or you may let it shrink into the ignoble form of a pretender, with the name of Republic, but without its soul.

[1] Of Reformation in England, Book II.: Works (London, 1851), Vol. III. p. 34.

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Before considering this vital question, it is proper to regard the origin of this "guaranty," and see how it obtained place in the Constitution. Perhaps there was no clause more cordially welcomed; nor does it appear that it was subjected to any serious criticism in the National Convention or in any State Convention. It is not found in the Articles of Confederation; but we learn from the "Federalist"[1] that the want of this provision was felt as a capital defect in the plan of the Confederation. Mr. Madison, in a private record, made in advance of the National Convention, and which has only recently seen the light, enumerates among defects of the Confederation what he calls "want of guaranty to the States of their Constitutions and laws *against internal violence*"; and he then proceeds to anticipate danger from Slavery, which could be counteracted only by such "guaranty." Showing why this was needed, he says, that, "according to *republican theory*, right and power, being both vested in the majority, are held to be synonymous; according to fact and experience, a minority may, in an appeal to force, be an overmatch for the majority"; and he remarks, in words which furnish a key to the "guaranty" afterwards adopted, "Where Slavery exists, the *republican theory* becomes still more fallacious," — thus showing, that, at its very origin, it was regarded as a check upon Slavery.[2]

Hamilton was not less positive than Madison. In his sketch of a Constitution, communicated to Madison, and preserved by him,[3] this "guaranty" is found; and in the elaborate brief of his argument on the Con-

[1] No. XXI.

[2] Notes on the Confederacy, April, 1787: Letters and other Writings, Vol. I. p. 322

[3] Madison Papers, Vol. III., Appendix, No. 5.

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stitution, it is specified as one of its "miscellaneous advantages." The last words of this remarkable paper are "guaranty of republican governments."[1] Randolph, of Virginia, in his sketch of a Constitution, proposed the "guaranty," and, in a speech setting forth the evils of the old system, he said of the remedy, that "the basis must be the *republican principle*."[2] Colonel Mason, of Virginia, taking up the same strain, said, that, though the people might be unsettled on some points, they were settled as to others, among which he put foremost "an attachment to *republican government*."[3]

The proposition in its earliest form was, "that a republican government, and the territory of each State, except in the instance of a voluntary junction of government and territory, ought to be guarantied by the United States to each State."[4] This was afterward altered so as to read, "that a republican Constitution and its existing laws ought to be guarantied to each State by the United States." Gouverneur Morris thought that the proposition in this form was "very objectionable," and he added, that "he should be very unwilling that such laws as exist in Rhode Island should be guarantied." On discussion, it was amended, at the motion of Mr. Wilson, the learned and philosophical delegate from Pennsylvania, afterward of the Supreme Court of the United States, so as to read, "that *a republican form of government* shall be guarantied to each State, and that each State shall be protected against foreign and domestic violence," and in this form it was

[1] Works, Vol. II. pp. 463–466.

[2] Debates in the Federal Convention, May 29, 1787: Madison Papers, Vol. II. pp. 731, 734.

[3] Ibid., June 20, 1787, p. 913.

[4] Ibid., May 29, 1787, p. 734.

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unanimously adopted.[1] Afterward it underwent modification in the Convention and in the Committees of Detail and Revision, until it received the final form it now has in the Constitution:[2] —

"*The United States shall guaranty to every State in this Union a republican form of government*, and shall protect each of them against invasion, and, on application of the Legislature, or of the Executive, when the Legislature cannot be convened, against domestic violence."

Thus stands the "guaranty." If further reason be required for its introduction into the Constitution, it will be found in the prophetic language of the "Federalist": —

"It may possibly be asked, what need there could be of such a precaution, and whether it may not become a pretext for alterations in the State governments without the concurrence of the States themselves. These questions admit of ready answers. If the interposition of the General Government should not be needed, the provision for such an event will be a harmless superfluity only in the Constitution. *But who can say what experiments may be produced by the caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers?*"[3]

The very crisis anticipated has arrived. "The caprice of particular States," and "the ambition of enterprising leaders" have done their worst. And now the "guaranty" must be performed, not only for the sake of individual States, but for the sake of the Union to which

[1] Debates in the Federal Convention, June 11 and July 18, 1787: Madison Papers, Vol. II. pp. 844, 1139, 1141.

[2] Ibid., August 6, 30, and September 12, 15, 1787: Madison Papers, Vol. II. p. 1241, Vol. III. pp. 1466, 1467, 1558, 1590, 1621.

[3] The Federalist, No. XLIII. See, also, Story's Commentaries on the Constitution, Vol. III. § 1811.

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they all belong, and to advance the declared objects of the Constitution, specified in its preamble.

The text of this great contract is worthy of study. No stronger or more comprehensive words could be employed, whether we regard the object, the party guarantying, or the party guarantied. The express object is "a republican form of government." This is plain. The party guarantying is not merely the Executive or some specified branch of the National Government, but "the United States," or, in other words, the Nation. The Republic, which is the impersonation of all, guaranties "a republican form of government"; and every branch of the National Government must sustain the guaranty, including especially Congress, where is the collected will of the people. The obligation is not less broad, when we consider the party guarantied. Here there can be no evasion. The guaranty is not merely for the advantage of individual States, but for the common defence and the general welfare. It is a guaranty to each in the interest of all, and therefore a guaranty to all. And such is the solidarity of States in the Union, that the good of all is involved in the good of each. For each and all, then, this guaranty must be performed, when the *casus fœderis* arrives. As guarantor, the Republic, according to a familiar principle, is to act on default of the party guarantied; and then the duty is fixed in all its amplitude.

The testimony is complete. This clause was no hasty or accidental amendment, creeping into the Constitution by stealth or compromise, obscure in language and open to various interpretation, but a solemn act, couched in few, lucid, unmistakable words; and its precise purpose was just what so plainly appears, — to

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keep all the States truly "republican," and make the whole numerous people, in the development of the future, homogeneous and one. By these words the Nation is not only empowered, but commanded, to perform the great guaranty. Power and duty here concur. Mr. Webster was right, when he called this provision "a very stringent article, drawing after it the most important consequences, and all of them good consequences." [1]

The question, then, returns, What is "a republican form of government," according to the requirement of the National Constitution? Mark, if you please, that it is not the meaning of this term according to Plato and Cicero, not even according to examples of history, nor according to definitions of monarchical writers or lexicographers, — but what is "a republican form of government" according to the requirements of the National Constitution? Of course these important words were not introduced and unanimously adopted without purpose. They must be interpreted so as to have real meaning. Any interpretation rendering them insignificant must be discarded as irrational and valueless, if not dishonest. They cannot be treated as a phrase only, nor a dead letter, nor an empty figure-head. Nor can they be treated as profession and nothing more, so that the Constitution shall merely *seem* to be republican, reversing the old injunction, "To be rather than to seem," — *Esse quam videri.* They must be treated as real. Thus interpreted, they become at once a support of Human Rights and a balance-wheel to our whole political system.

[1] Argument in the Supreme Court of the United States, January 27, 1848, in the Case of Luther *v.* Borden et als.: Works, Vol. VI. p. 230.

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In determining their signification, I begin by putting aside what is vague, unsatisfactory, and inapplicable, in order to bring the inquiry directly to American institutions.

I put aside all illustration derived from the speculations of ancient philosophers, because, on careful examination, it appears that the term "Republic," as used by them, was so absolutely different from any idea among us as to exclude their definition from the debate. This captivating term is of Roman origin. It is the same as "commonwealth," and means the public interest. As originally employed, it was not a specific term, describing a particular form of government, but a general term, embracing all governments, whether kingly, aristocratic, democratic, or mixed. Its equivalent in Greece was "polity," being the general term for all governments. Therefore the definition of a Republic, according to these ancients, is simply the definition of an organized government, whether kingly, aristocratic, democratic, or mixed. Following this definition, the words of the Constitution are only the guaranty of an organized government, without determining its character. This, of course, leaves open the very question under consideration.

While the ancient nomenclature cannot be cited in determining the definition of a Republic, we may be encouraged by it in demanding that all government, whatever name it bears, shall be designed to establish justice and secure the general welfare. Thus, Plato, who commenced these interesting speculations, likens government to a just man, delighting in justice always, however treated by others; and the philosopher insists that every man is a government to himself as every

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community is a government to itself. His ideal commonwealth appears in a good man, and this analogy testifies to the government he conceived. Aristotle, in a different vein, and with more precision, opens by declaring that "every state is a certain community" or "partnership."[1] This idea appears again when he says, "Nothing more characterizes a complete citizen than *having a share* in the judicial and executive part of the government."[2] In various places he speaks of "the common good" as a special object, — as, "when the One, the Few, or the Many govern for the common good, theirs must be called a good government"[3]; and he defines a democracy as "where the freemen and the poor, being the majority, are masters of the government."[4] The same ideas find new fervor and expansion, when Cicero says, "A republic is the interest of the people. But by the people I do not mean every assemblage of men, gathered together anyhow, but a body of men associated through agreement in right and community of interest."[5] And then again, in another place, the Roman philosopher says, "Only in a state where the power of the people is supreme has Liberty any abode, and, *where not equal*, it is not really Liberty."[6] But all these requirements or aspirations are applicable to any government, of whatever form; and it is well known that Cicero recorded his preference for a government tempered by admixture of the three different kinds; so that we are not advanced in our definition, unless we insist that our Republic should have all the virtues accorded to the ideal com-

[1] Politics, Book I. ch. 1.
[2] Ibid., Book III. ch. 1.
[3] Ibid., Book III. ch. 7.
[4] Politics, Book IV. ch. 4.
[5] De Republica, Lib. I. c. 25.
[6] Ibid., c. 31.

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monwealth. And yet there are two principles which all these philosophers teach: the first is justice; and the second is the duty of seeking the general welfare.

I next put aside the examples of history, as absolutely fallacious and inapplicable. In all ages, governments have been called Republics. Tacitus speaks of Rome under the tyranny of the Empire as the Republic; and Marcus Aurelius, while Emperor, pledges himself to the Republic. Indeed, there is hardly a government, from that of the great hunter Nimrod down to insulted and partitioned Poland, which has not been called Republic. In 1773, only a few years before the adoption of the National Constitution, Russia, Austria, and Prussia, after dividing Poland, undertook to establish fundamental laws for this conquered country, where was this declaration: —

"The government of Poland shall be forever free, independent, *and of a republican form:* the true principle of said government consisting in the strict execution of its laws, and the equilibrium of the three estates, namely, the king, the senate, and the equestrian order." [1]

But a government thus composed cannot be recognized in this debate as "of a republican form."

At the adoption of the Constitution, the most competent persons, who disagreed on other things, agreed in discarding these examples. Alexander Hamilton and John Adams met here on common ground. The former, in the Brief of his Argument, exhibits the various forms of government to which the term "Republic" has been applied.

[1] John Adams, Defence of the Constitutions of Government of the United States: Works, Vol. IV. p. 370.

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"A Republic, a word used in various senses. Has been applied to aristocracies and monarchies. (1.) To Rome under the Kings. (2.) To Sparta, though a Senate for life. (3.) To Carthage, though the same. (4.) To United Netherlands, though Stadtholder, hereditary nobles. (5.) To Poland, though aristocracy and monarchy. (6.) To Great Britain, though monarchy, &c." [1]

John Adams, in his Defence of the American Constitutions, written immediately anterior to the National Constitution, concurs with Hamilton.

"But, of all the words in all languages, perhaps there has been none so much abused in this way as the words *Republic*, Commonwealth, and Popular State. In the *Rerum-Publicarum Collectio*, of which there are fifty and odd volumes, and many of them very incorrect, France, Spain, and Portugal, the four great Empires, the Babylonian, Persian, Greek, and Roman, and even the Ottoman, are all denominated Republics." [2]

In his old age the patriarch expressed himself in the same sense, and with equal force.

"The customary meanings of the words *Republic* and *Commonwealth* have been infinite. They have been applied to every government under heaven: that of Turkey, and that of Spain, as well as that of Athens and of Rome, of Geneva and San Marino." [3]

And then again he said: —

"In some writing or other of mine, I happened, *currente calàmo*, to drop the phrase, 'The word *Republic*, as it is used, may signify anything, everything, or nothing.' For this

[1] Brief of Argument on the Constitution of the United States: Works, Vol. II. p. 463.

[2] Defence of the Constitutions: Works, Vol. V. p. 453.

[3] Letter to J. H. Tiffany, March 31, 1819: Ibid., Vol. X. pp. 377, 378.

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escape I have been pelted, for twenty or thirty years, with as many stones as ever were thrown at St. Stephen, when St. Paul held the clothes of the stoners. But the aphorism is literal, strict, solemn truth. To speak technically, or scientifically, if you will, there are monarchical, aristocratical, and democratical republics. The government of Great Britain and that of Poland are as strictly republics as that of Rhode Island or Connecticut under their old charters." [1]

In the latter remark, Mr. Adams simply repeats his treatise, where he calls England and Poland "monarchical or regal *republics*." [2]

It is plain that our fathers, when they adopted the "guaranty" of "a republican form of government," intended something certain, or which, if not certain on the face, could be made certain. But this excludes the authority of incongruous and inconsistent examples. They did not use words to signify "anything, everything, or nothing"; nor did they use words which were as applicable to England and Poland as to the United States. Therefore I cannot err in putting aside examples which, however they illustrate republican government in times past, are utterly out of place as a guide to the interpretation of the National Constitution. Something better must be found: nor is it wanting.

I put aside, also, definitions of European writers and lexicographers anterior to the National Constitution; for all these have the vagueness and uncertainty of political truth at that time in Europe. Among these, none is of higher authority than Montesquieu, who brought to political science study, genius, and a liberal spirit. But even this great writer, who profited by all his

[1] Letter to J. H. Tiffany, April 30, 1819: Works, Vol. X. p. 378.
[2] Defence of the Constitutions: Ibid., Vol. IV. p. 358.

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predecessors, quickens and elevates without furnishing a satisfactory guide. He taught that "Virtue" was the inspiring principle of a republic, and by "virtue" he means the love of country, which, he says, is the love of equality.[1] This is beautiful, and makes Equality a foremost principle; but, with curious inconsistency, he includes "democracy" and "aristocracy" under the term "Republic," — the former being where the people in mass have the sovereign power, and the latter "where the sovereign power is in the hands of *part of the people*." When defining "democracy," he expresses the importance of the suffrage as a fundamental of government, saying, among other things, that it is as important to regulate *by whom* the suffrage shall be given as in a monarchy to know who is the monarch.[2] But among all these glimpses of truth there is no definition of "a republican form of government" which can help us in interpreting the National Constitution. Surely an aristocracy, "where the sovereign power is in the hands of *part of the people*," cannot find a just place in our political system. It may be "a republican form of government" according to Montesquieu, but it cannot be according to American institutions.

One of the ablest among the modern predecessors of Montesquieu was John Bodin, also a Frenchman, who wrote nearly two centuries earlier. Like the ancient writers, he uses the term "republic" to embrace monarchy, aristocracy, and democracy, which he calls "three kinds of republics," — *tria rerumpublicarum genera*. If the republic is in the power of one, *penes unum*, it is a monarchy; if in the power of a few, *penes paucos*, it

[1] De l'Esprit des Lois, Liv. III. ch. 3; IV. 5; V. 2, 3.
[2] Ibid., Liv. II. chs. 1, 2.

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is an aristocracy; if in the power of all, *penes universos*, it is a democracy. Proceeding further, he says that a democracy is "where all or the major part of all the citizens, *omnes aut major pars omnium civium*, collected together, have the supreme power."[1] Here the philosopher plainly follows the rule of jurisprudence in regard to corporations; but this definition seems to sanction the exclusion of part of the citizens, less than a majority, while it is inadequate in other respects. It says nothing of equality of rights, or of that great touchstone of the republican idea, the dependence of taxation upon representation.

But in his day the word was general, and not specific, as appears in other instances. The easy-going and very natural Brantôme, a contemporary of Bodin, quotes a book of his day which in its title speaks of "the Republic of France."[2] This was while the most unrepublican house of Valois ruled. The great Chancellor l'Hospital uses the word in the same sense, when in his famous testament he speaks of yielding to "the necessity of the Republic."[3] We have also the authority of Henri Martin, in his admirable History of France, who says that the word in Bodin "means only the State in its broad signification."[4] Plainly, from writers of this period there is little help in the present inquiry.

There are later definitions to be put aside also. Thus, for instance, it is often said that a republic is "a gov-

[1] De Republica, Lib. II. c. 1.

[2] Histoire de nostre Temps, de l'Estat de la Religion et *de la République de France*, soubz le Roy Henry second, François second et Charles neuviesme: Vies des Hommes Illustres et Capitaines François, Discours LVIII.: Œuvres Complètes du Seigneur de Brantôme (Paris, 1822), Tom. II. p. 310.

[3] Brantôme, Vies des Hommes Illustres et Capitaines François, Discours LXII.: Œuvres, Tom. II. p. 395.

[4] Histoire de France (4me édit.), Tom. IX. p. 391.

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ernment of laws, and not of men"; and this saying found favor with some among our fathers.[1] Long before, Aristotle had declared that such a government would be the kingdom of God.[2] But this condition, though marking an advanced degree of civilization, and of course essential to a republic, cannot be recognized as decisive. On its face it is vague from comprehensiveness. It is enough to say that it would embrace England, whose government our fathers renounced in order to build a republic. And still further, it would throw its shield over a government which "frameth mischief by a law." This will not do.

There is also a plausible definition by Millar, the learned author of the work on the British Constitution, who states, hypothetically, that by Republic may be meant "a government in which there is no king or hereditary chief magistrate."[3] But this, again, must be rejected, as leaving aristocracies and oligarchies in the category of republics.

Sometimes we hear that a government with an elective chief magistrate is a republic. Here, again, nothing is said of aristocracy or oligarchy, which coexist with an elective chief magistrate, — as in Venice, where the elected Doge was surrounded by an oligarchy of nobles, and in Holland, where the elected Stadtholder was a prince surrounded by princes. But there are other instances which make this definition unsatisfactory, if not absurd. The Pope of Rome is an elective chief magistrate; so also is the Grand Lama; but surely the States of the Church are not republican, nor is Thibet.

[1] John Adams, Novanglus: Works, Vol. IV. p. 106.

[2] Politics, Book III. ch. 16.

[3] Historical View of the English Government (London, 1818), Vol. III. p. 326.

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Rejecting the definition founded on the elective character of the chief magistrate, we must also reject another, founded on "the sovereignty of more than one man." It has been said positively, by an eminent person who has written much on the subject, that "the strict definition of a republic is that in which the sovereignty resides in more than one man."[1] But this strict definition embraces aristocracies and oligarchies.

I conclude these rejected specimens with that of Dr. Johnson in his Dictionary, which appeared before American Independence: —

"REPUBLIC. (1.) Commonwealth; state in which the power is lodged in more than one. (2.) Common interest; the public."

These definitions are all as little to the purpose as the "vulgar error," chronicled by Sir Thomas Browne, "that storks are to be found and will only live in republics,"[2] — or the saying of Rousseau, at a later day, that, "were there a nation of gods, it would govern itself democratically,"[3] — or the remark of John Adams, that "all good government is republican."[4] "It is evident that we must turn elsewhere for the illumination we need. If others thus far have failed, it is because they have looked across the sea instead of at home, and have searched foreign history and example instead of simply recognizing the history and example of their own country. They have imported inapplicable and uncertain definitions, forgetting that the Fathers, by pos-

[1] John Adams, Letter to J. H. Tiffany, March 31, 1819: Works, Vol. X. p. 378.

[2] Enquiry into Vulgar and Common Errors, Book III. ch. 27, § 3.

[3] Du Contrat Social, Liv. III. ch. 4: Œuvres (Paris, 1821), Tom. V. p. 175.

[4] Letter to John Penn: Works, Vol. IV. p. 204. See also Letter to George Wythe: Ibid., p. 194.

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itive conduct, by solemn utterances, by declared opinions, and by public acts, all in harmony and constituting one overwhelming testimony, exhibited their idea of a republican government in a way at once applicable and certain. They are the natural interpreters of their own Constitution. Mr. Fox, the eminent English statesman, exclaimed in debate, that, "if, by a peculiar interposition of Divine power, all the wisest men of every age and of every country could be collected into one assembly, he did not believe that their united wisdom would be capable of forming even a tolerable constitution,"[1] — meaning, of course, that a constitution must be derived from habits and convictions, and not from any invention. There is sound sense in the remark; and it is in this spirit that I turn from a discussion having only this value, that it shows how little there is in the past to interpret the meaning of the Fathers.

Every constitution embodies the principles of its framers. It is a transcript of their minds. If its meaning in any place is open to doubt, or if words are used which seem to have no fixed signification, we cannot err in turning to the framers; and their authority increases in proportion to the evidence they have left on the question. By "a republican form of government" our fathers plainly intended a government representing the principles for which they had struggled. Now, if it appears that through years of controversy they insisted on certain principles as vital to free government, even to the extent of encountering the mother country in war, — that afterward, on solemn occasions, they heralded these principles to the world as "self-evident truths,"

[1] Speech on Motion for a Reform in Parliament, May 7, 1793: Hansard's Parliamentary History, Vol. XXX. col. 915.

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— that also, in declared opinions, they sustained these principles, — and that in public acts they embodied these principles, — then is it beyond dispute that these principles must have entered into the idea of the government they took pains to place under the guaranty of the nation. But all these things can be shown unanswerably.

In these words of hypothesis I foreshadow the four different heads under which these principles may be seen.

First, as asserted by the Fathers throughout the long radical controversy which culminated in war.

Secondly, as announced in solemn declarations.

Thirdly, as sustained in declared opinions.

Fourthly, as embodied in public acts.

1. I begin with *the principles asserted by our fathers throughout the protracted controversy that preceded the Revolution.* If Senators ask why our fathers struggled so long in controversy with the mother country, and then went forth to battle, they will find that it was to establish the very principles for which I now contend. To secure the natural rights of men, and especially to vindicate the controlling maxim that there can be no taxation without representation, they fought with argument and then with arms. Had these been conceded, there would have been no Lexington or Bunker Hill, and the Colonies would have continued yet longer under transatlantic rule. The first object was not independence, but the establishment of these principles; and when at last independence began, it was because these principles could be secured in no other way. Therefore the triumph of independence was the triumph of these principles, which necessarily entered

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into and became the animating soul of the Republic then and there born. The evidence is complete, and, if I dwell on it with minuteness, it is because of its decisive character.

The great controversy opened with the pretension of Parliament to tax the Colonies, first disclosed to Benjamin Franklin as early as 1754. It was at the time a profound secret; but the patriot philosopher, whose rare intelligence embraced the natural laws of government not less than those of science, in a few masterly sentences exposed the injustice of taxation without representation.[1] For a moment the Ministry shrank back; but at last, when the power of France had been humbled, and the Colonies were no longer needed as allies in war, George Grenville, blind to principle and only seeing an increase of revenue, renewed the irrational claim. The Colonies were to be taxed by the Parliament in which they had no representation. Two millions and a half of people — for such was the population then — were to pay taxes without voice in determining them. The men of that day listened to the tidings with dismay. In this ministerial outrage they saw the overthrow of their liberties, whether founded on natural rights or on the rights of British subjects. In their conclusions they were confirmed by two names of authority in British history, Algernon Sidney and John Locke, each of whom solemnly asserted the liberties now in danger. One had borne his testimony on the scaffold, the other in exile.

Sidney, in his Discourses on Government, did not hesitate to say, that "God leaves to man the choice

[1] Three Letters to Governor Shirley, December, 1754: Works, ed. Sparks, Vol. III. pp. 56, seqq.

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of forms in government," — and then again, that "all just magistratical power is from the people."[1] Such words were calculated to strengthen the sentiment of human freedom. But it was Locke who gave formal expression to the very principles now assailed. In a famous passage of his work on Civil Government, inspired and tempered by his exile in Holland, this eminent Englishman bore his testimony.

"It is true governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent, i. e. the consent of the majority, *giving it either by themselves or their representatives chosen by them;* for, if any one shall claim a power to lay and levy taxes on the people by his own authority *and without such consent of the people,* he thereby invades the fundamental law of property and subverts the end of government; for what property have I in that which another may by right take, when he pleases, to himself?"[2]

Here is a plain enunciation of two capital truths: first, that all political society stands only on the consent of the governed; and, secondly, that taxation without representation is an invasion of fundamental right. It was these truths that our fathers embraced in the controversy before them; and these same truths, happily characterized by Hallam as "fertile of great revolutions and perhaps pregnant with more,"[3] are as fertile and as pregnant now as then.

[1] Discourses concerning Government (London, 1751), pp. 14, 54, Ch. I. §§ 6, 20.

[2] Two Treatises on Government, Book II. ch. 11, § 140: Works (London, 1812), Vol. V. pp. 422, 423.

[3] Introduction to the Literature of Europe (London, 1847), Vol. III. p. 445, Part IV. ch. 4, § 95.

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But even this illumination did not begin with these illustrious Englishmen. Two centuries before their testimony, Philippe de Comines, a minister of Louis the Eleventh, in his Memoirs, marking an epoch in historical literature, announced the same principle; so that here France antedates England.

"Is there king or lord on earth who has power, outside his domain [personal estate], to impose a penny upon his subjects, *without grant and consent of those who must pay it*, unless by tyranny or violence?"[1]

That good man, who excelled so much as teacher, and did so much for scholarship and history, Arnold of Rugby, records a conclusion hardly less important than that of his earlier compatriots.

"It seems to be assumed in modern times that the being born of free parents within the territory of any particular state, and the paying towards the support of its government, *conveys a natural claim to the rights of citizenship*."[2]

Others had said there could be taxation only with the consent of the people taxed. The last authority exhibits citizenship associated with contribution to the support of the government. This same political truth appeared in Virginia as early as 1655–6, where, by solemn enactment, repealing a restriction upon suffrage, it was declared "something hard and unagreeable to reason that any persons shall pay equal taxes and yet have no votes in elections."[3] And it reappears in the famous Declaration of Rights, adopted unanimously June 12, 1776, which announces that men

[1] Mémoires, Liv. V. ch. 19: Petitot, Mémoires relatifs à l'Historie de France, Tom. XII. p. 298.

[2] Preface to Vol. III. Thucydides, p. xv (Oxford, 1842).

[3] Hening, Statutes at Large, Vol. I. p. 403.

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"cannot be taxed or deprived of their property for public uses without their own consent or that of their representatives so elected."[1]

Sidney and Locke unquestionably exercised more influence over the popular mind, preceding the Revolution, than any other writers. They were constantly quoted, and their names were held in reverence. But their authority has not ceased. As they spoke to our fathers, they now speak to us: *Sicut patribus, sic nobis.*

The cause of Human Liberty, in this great controversy, found voice in James Otis, a young lawyer of eloquence, learning, and courage, whose early words, like the notes of the morning bugle mingling with the dawn, awakened the whole country. Asked by the merchants of Boston to speak at the bar against Writs of Assistance, issued to enforce ancient Acts of Parliament, he spoke both as lawyer and as patriot, and so doing became a statesman. His speech was the most important, down to that occasion, ever made on this side of the ocean. An earnest contemporary, who was present, says, "No harangue of Demosthenes or Cicero ever had such effects upon this globe as that speech."[2] It was the harbinger of a new era. For five hours the brilliant orator unfolded the character of these Acts of Parliament; for five hours he held the court-room in rapt and astonished admiration; but his effort ascended into statesmanship, when, after showing that the colonists were without representation in Parliament, he cried out, that, notwithstanding this exclusion, Parliament had undertaken to "impose taxes, and enormous taxes, burdensome taxes, oppressive, ruinous, intolerable taxes";

[1] Hening, Statutes at Large, Vol. IX. p. 110.

[2] John Adams, Letter to William Tudor, December 18, 1816: Works, Vol. X. p. 288.

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and then, glowing with generous indignation at this injustice, he launched that thunderbolt of political truth, "Taxation without representation is Tyranny."[1] From the narrow court-room where he spoke, the thunderbolt passed, smiting and blasting the intolerable pretension. It was the idea of John Locke; but the fervid orator, with tongue of flame, gave to it the intensity of his own genius. He found it in a book of philosophy; but he sent it forth a winged messenger blazing in the sky.

John Adams, then a young man just admitted to the bar, was present at the scene, and he dwells on it often with sympathetic delight. There, in the Old Town-House of Boston, sat the five judges of the Province, with Hutchinson as Chief Justice, in robes of scarlet, cambric bands, and judicial wigs; and there, too, in gowns, bands, and tie-wigs, were the barristers. Conspicuous on the wall were full-length portraits of two British monarchs, Charles the Second and James the Second, while in the corners were the likenesses of Massachusetts Governors. In this presence the great oration was delivered. The patriot lawyer had refused compensation. "In such a cause as this," said he, "I despise a fee." He spoke for country and for mankind. Firmly he planted himself on the Rights of Man, which he insisted were, by the everlasting Law of Nature, inherent and inalienable; and these rights, he nobly proclaimed, were common to all, without distinction of color. To suppose them surrendered in any other way than by *equal rules and general consent* was to suppose men idiot or mad, whose acts are not binding. But he especially flew at two arguments of tyranny: first,

[1] John Adams, Letter to William Tudor, June 9, 1818: Works, Vol. X. p. 319.

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that the colonists were "virtually" represented, and, secondly, that there was such a difference between direct and indirect taxation, that, while the former might be questionable, the latter was not. To these two apologies he replied, first, that no such phrase as "virtual representation" was known in Law or Constitution, — that it is altogether subtilty and illusion, wholly unfounded and absurd, — and that we must not be cheated by any such phantom, or other fiction of law or politics, or any monkish trick of deceit and hypocrisy; and then, with the same crushing force, he said, that, in absence of representation, all taxation, whether direct or indirect, whether internal or external, whether on land or trade, was equally obnoxious to the same unhesitating condemnation.[1] The effect was electric. The judges were stunned into silence, and postponed judgment. The people were aroused to a frenzy of patriotism. "American Independence," says John Adams, in the record of his impressions, "was then and there born; the seeds of patriots and heroes were then and there sown, to defend the vigorous youth. Every man of a crowded audience appeared to me to go away, as I did, ready to take arms against Writs of Assistance. Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born."[2] But this great birth is inseparably associated with the principle, then and there declared, that "Taxation without representation is Tyranny."

From this time forward Otis dedicated himself singly

[1] John Adams, Works, Vol. II. pp. 521–525; Vol. X. pp. 244–249, 314–362. Tudor's Life of Otis, Chs. V., VI.

[2] Letter to William Tudor, March 29, 1817: Works, Vol. X. pp. 247, 248.

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to the cause he had so bravely upheld, and the popular heart clove to him. He became the favorite of his fellow-countrymen. His arguments were repeated, his words were gratefully adopted, and the saying, "Taxation without representation is tyranny," became a maxim of patriotism. In May, 1761, only a few weeks after this utterance, he was chosen a representative of Boston in the Legislature by an almost unanimous vote. The Crown officers were dismayed by this most significant election, and one of them, speaking with prophetic lamentation, said it would "shake the Province to its foundation"; on which John Adams remarked, many years later, when some of its results were already visible, "That election has shaken two continents, and will shake four."[1] Of course this was simply because it affirmed and invigorated a practical truth of government by which all the people are confirmed in political power. At his new post of duty, Otis became the acknowledged leader, constant, fervid, eloquent, and, according to his own language, "daring to speak plain English." While still declaring unhesitating loyalty to the Crown, and even pledging "the last penny and the last drop of blood, rather than that by any backwardness of ours his Majesty's measures should be embarrassed," he made haste to announce, in words where humor blends with truth, that "God made all men naturally equal," — that "the ideas of earthly superiority, preëminence, and grandeur are educational, at least acquired, not innate," — that "no government has a right to make hobby-horses, asses, and slaves of the subject, Nature having made sufficient of the two former for all the lawful purposes of man, from the harm-

[1] Letter to William Tudor, March 29, 1817: Works, Vol. X. p. 248.

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less peasant in the field to the most refined politician in the cabinet, but none of the last, which infallibly proves they are unnecessary." But the case would have been imperfectly stated, if the patriot representative had not once more cried out against taxation without representation, and warned against the calamities that must follow from this unquestionable tyranny. This early debate is preserved in a pamphlet, printed in 1762, and entitled "A Vindication of the Conduct of the House of Representatives of the Province of the Massachusetts Bay, etc., by James Otis, Esq.," which, we are told by an eminent authority, contains, in solid substance, all that is found in the Declaration of Rights and Wrongs issued by Congress in 1774, the Declaration of Independence in 1776, and the subsequent writings of those political philosophers who upheld the national cause.[1] Pardon me, if I dwell too minutely on this history. I do it only to illustrate the issue of principle actually made with the mother country.

The controversy still continued, when, in 1764, the orator, who by voice and pen had so bravely maintained the cause of his country, put forth another publication, entitled "The Rights of the British Colonies Asserted and Proved." Mark, if you please, the vigor of the title. The rights of the Colonies are not only "asserted," but "proved." Reprinted in London, this pamphlet was read by Lord Mansfield, Chief Justice of England, and was answered by Soame Jenyns, a partisan writer of the Crown. The copy I hold in my hand has the imprint of London, and is marked "Third Edition." All things considered, it is the most remark-

[1] John Adams, Letter to William Tudor, April 5, 1818: Works, Vol. X. pp. 300-312.

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able pamphlet of our country, and one of the most remarkable ever written. Recent events, verifying the truths it so early announced, elevate its place in history. Here are the same vital principles, enforced with learning and eloquence, which Otis announced at the bar, and then again in the debates of the Legislature; and here are not only the truths asserted by our fathers, but the unanswerable arguments by which they were vindicated. Even an abstract would be too long for this debate; but the character of this Defence of the American People, not unlike Milton's famous "Defensio pro Populo Anglicano," will appear in a few passages, where, as in gleams, may be discerned the *Idea of a Republic.*

I do not pause on the assertion, "that every man of a sound mind should have his vote," or the authority he invokes, when he says, "Lord Coke declares that it is against Magna Charta and against the franchises of the land, for freemen to be taxed but by their own consent," both of which, sounded by him elsewhere,[1] are important premises. Nor do I dwell on that admirable statement of much in little, "The first simple principle is Equality and the Power of the Whole."[2] The Equality of All and the Power of All! — the two buttresses of a just government. I come at once to the plain statement of fundamental right.

"The supreme power cannot take from any man any part of his property *without his consent in person or by representation.*"

"Taxes are not to be laid on the people *but by their consent in person or by deputation.*"[3]

[1] See Bancroft's History of the United States, Vol. V. pp. 290, 291.
[2] Rights of the British Colonies, p. 14. [3] Ibid., p. 37.

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Such are "the first principles of law and justice, and the great barriers of a free state"; and then he adds, "I ask, I want no more."[1] And these principles he claims for all, without distinction of color.

"The colonists are by the Law of Nature free-born, as indeed all men are, white or black. . . . . Does it follow that 't is right to enslave a man because he is black? Will short, curled hair, like wool, instead of Christian hair, as 't is called by those whose hearts are as hard as the nether millstone, help the argument? Can any logical inference in favor of Slavery be drawn from a flat nose, a long or a short face?"[2]

Assuming these rights as common to all, whether white or black, he insists that any taxation, whether direct or indirect, without representation, is only another form of Slavery.

"I can see no reason to doubt but that the imposition of taxes, whether on trade, or on land, or houses, or ships, on real or personal, fixed or floating property, in the Colonies, is absolutely irreconcilable with the rights of the colonists, as British subjects, *and as men.* I say men, for in a state of Nature no man can take my property from me without my consent. *If he does, he deprives me of my liberty and makes me a slave.* . . . . The very act of taxing, exercised over those who are not represented, appears to me to be depriving them of one of their most essential rights as freemen, and, if continued, seems to be in effect *an entire disfranchisement of every civil right.* For what one civil right is worth a rush, after a man's property is subject to be taken from him at pleasure, without his consent?"[3]

Such was the voice of James Otis, who was our John the Baptist. It was he who went before in this great

[1] Rights of the British Colonies, p. 37. [2] Ibid., p. 29. [3] Ibid., p. 38.

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controversy. He first stated the case between the Colonies and the mother country, and first developed the principles in issue. But, though first, he was not long alone. Conspicuous among his followers was Samuel Adams, that austere patriot, always faithful and true, who desired to make Puritan Boston "a Christian Sparta." He was remarkable for the simplicity, accuracy, and harmony of his style, and on this account often held the pen for the Legislature or the town-meeting. In obedience to the latter, he drew up instructions to the Representatives of Boston, afterward adopted in Faneuil Hall, where, repeating the very arguments of Otis, he says, "If our trade may be taxed, why not our lands, why not the produce of our lands, and everything we possess or make use of?" And then, advancing in the subject, he asks: "If taxes are laid upon us in any shape *without our having a legal representation where they are laid*, are we not reduced from the character of free subjects to the miserable state of tributary slaves?"[1] In proposing this question, he leaves no room to doubt the answer it deserved.

Soon thereafter, Franklin, as agent of Pennsylvania, maintained the same principles in England. But the ministry, hurried on by fatal folly leading to destruction, persevered in their pretension. The Stamp Act was passed, and for the first time in our history papers bore stamps, to swell the revenue of the Crown. Massachusetts remonstrated in formal resolutions, "particularly considered," wherein it is declared, "That there are certain essential rights of the British Constitution of Government, which are founded in the law of God

[1] Rights of the British Colonies, Appendix, p. 69. Wells's Life of Samuel Adams, Vol. I. pp. 46–48.

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and Nature, and are the common rights of mankind,— therefore, ... that no man can justly take the property of another without his consent,— . . . . that all acts made by any power whatever, other than the General Assembly of this Province, imposing taxes on the inhabitants, are infringements of our inherent and unalienable rights as men and British subjects, and render void the most valuable declarations of our Charter."[1] In an address to the Royal Governor, the Legislature, after setting forth the injustice of the Stamp Act, proceeded to say, "We must beg your Excellency to excuse us from doing anything to assist in the execution of it."[2] The people in town-meetings took up the strain, and all united against the Act. But Massachusetts was not alone.

Virginia, by positive statute, as early as 1655–6 recognized the just principle, as we have already seen;[3] and now a writer of that State, catching the spirit of Otis, declared, in an elaborate pamphlet, that it was "an essential principle of the English Constitution that the subject shall not be taxed *without his consent*"; and then again, quoting the words of another, "All men have natural, and freemen legal rights, which they may justly maintain, and no legislative authority can deprive them of."[4] The Legislature of Virginia, even before Massachusetts, adopted resolutions kindred in spirit, which were moved by Patrick Henry, and heroi-

[1] Resolves, October 26, 1765: Journal of House of Representatives, pp. 151–153; Hutchinson's History of Massachusetts, Vol. III. pp. 476–478, Appendix.

[2] Answer to Governor's Speech, October 24, 1765: Journal of House of Representatives, p. 135; Hutchinson's History of Massachusetts, Vol. III. p. 474, Appendix.

[3] *Ante*, p. 157.

[4] Considerations on the Propriety of imposing Taxes in the British Colonies (2d edit., London, 1766), p. 5 and Preface.

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cally carried by his eloquent voice, even against the menacing cry of "Treason." Thus spoke Virginia, exposing the true issue, and insisting on the inseparability of taxation and representation: —

"*Resolved*, That the taxation of the people by themselves, or *by persons chosen by themselves to represent them*, who can only know what taxes the people are able to bear, or the easiest method of raising them, and must themselves be affected by every tax laid on the people, *is the only security against a burdensome taxation* and the distinguishing characteristic of British freedom, without which the ancient Constitution cannot exist."[1]

Pennsylvania, by her House of Assembly, spoke also to the same effect: —

"*Resolved, N. C. D.*, That this House think it their duty thus firmly to assert with modesty and decency their *inherent rights*, that their posterity may learn and know that it was not with their consent and acquiescence that *any taxes* should be levied on them by any persons but their own representatives."[2]

The controversy proceeded. At the invitation of Massachusetts, moved by Otis, a Congress assembled at New York in October, 1765, having delegates from Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina, which, after a prolonged session, adopted a declaration of colonial rights and grievances, where it is declared: —

"That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes

[1] Wirt's Life of Patrick Henry (3d edit.), p. 68.

[2] Resolves, September 21, 1765: Votes and Proceedings of the House of Representatives, Vol. V. p. 426.

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be imposed on them *but with their own consent, given personally or by their representatives.*

"That the people of these Colonies are not, and from their local circumstances cannot be, represented in the House of Commons in Great Britain."[1]

At last the Stamp Act was repealed. But the pretension of taxation was suspended rather than abandoned. A ministerial partisan continued to urge the scheme in unscrupulous language:—

"All countries unaccustomed to taxes are at first violently prepossessed against them, though the price which they give for their liberty: like an ox untamed to the yoke, they show at first a very stubborn neck, but by degrees become docile and yield a willing obedience. . . . . America must be taxed."[2]

As time advanced, the old audacity was revived, and, under the lead of the reckless Charles Townshend, taxes were imposed by Parliament on tea, glass, lead, paper, and painters' colors. The old opposition in the Colonies was revived also, and taxation without representation was again denounced. Committees of correspondence were established, and the work of organization began. The whole country was in a fever. Massachusetts, as in times past, did not hesitate to proclaim the true principle. At a town-meeting of Boston in 1772, there was a declaration of rights, "which no man or body of men, consistently with their own rights as men and citizens or members of society, can for themselves give up or take away from others"; and here we meet again familiar words:—

[1] Authentic Account of the Proceedings of the Congress held at New York in 1765 (London, 1767), pp. 5, 6.

[2] The Justice and Necessity of Taxing the American Colonies Demonstrated (London, 1766), pp. 13, 14.

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"The supreme power cannot justly take from any man any part of his property without his consent in person or by his representatives." [1]

Against all Parliamentary taxation, as often as it showed itself, this impenetrable buckler was lifted. But the mother country was perverse. Ship-loads of tea arrived. At Boston the tea was thrown into the dock. The Colonies entered into an agreement of non-importation. Then came troops, and the Boston Port Bill, by which this harbor was vindictively closed against commerce. The whole country, including even South Carolina, made common cause with Massachusetts. Gadsden exclaimed, "Massachusetts sounded the trumpet, but to Carolina is it owing that it was attended to." [2] And Virginia exclaimed, "*We will never be taxed but by our own representatives.* This is the great badge of Freedom. . . . . Whether the people in Boston were warranted by justice, when they destroyed the tea, we know not; but this we know, that the Parliament, by their proceedings, have made us and all North America parties in the present dispute." [3] Meanwhile more troops arrived. All things portended strife; and yet the colonists did not ask for independence. They only asked for rights, insisting always that there should be no taxation without representation. "The patriots of this Province," said John Adams in 1774, "desire nothing new; they wish only to keep their old privileges. They were for one hundred and fifty years allowed to tax themselves, and

[1] Votes and Proceedings of the Town of Boston, October 28th and November 2d, 20th, 1772, pp. 9, 10. Wells's Life of Samuel Adams, Vol. I. p. 506.

[2] Bancroft's History of the United States, Vol. V. p. 294.

[3] Instructions to the Delegates from Hanover County to the Virginia Convention, August 1, 1774: Wirt's Life of Patriek Henry, p. 99, note.

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govern their internal concerns as they thought best. Parliament governed their trade as they thought fit. This plan they wish may continue forever."[1] Thus stood the two parties face to face.

Then came the Continental Congress, which at once put forth resolutions, where, after claiming the enjoyment of life, liberty, and property, as natural rights, it was insisted that the colonists could be bound by no law to which they had not consented by representatives. Here was the original programme of James Otis: first, the rights of men, according to Natural Law; and, secondly, the principle that government, including of course taxation, depended on the consent of the governed. "*The foundation* of English Liberty and *of all free government*," said these resolutions, "is a right in the people to participate in their legislative council."[2] In harmony with these resolutions were the several addresses of the Continental Congress, — to the people of Great Britain, to the inhabitants of the Province of Quebec, and to the king himself, — always pleading for Human Rights in the largest sense. The address to the people of Great Britain begins by an appeal for "the rights of men and the blessings of Liberty," and then insists "that no power on earth has a right to take our property from us without our consent."[3] The address to the inhabitants of the Province of Quebec, in similar spirit, says: "*The first grand right is that of the people having a share in their own government by their representatives chosen by themselves*, and, in consequence, of being ruled by laws which they themselves approve, not by edicts of men over whom they have no control.

[1] Novanglus, No. VIII.: Works, Vol. IV. p. 131.
[2] Journals of Congress, Vol. I. p. 29, October 12, 1774.
[3] Ibid., pp. 38, 39, October 21, 1774.

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This is a bulwark surrounding and defending their property."[1] And the petition to the king has the same key-note: "Duty to your Majesty, and regard for the preservation of ourselves and our posterity, *the primary obligations of Nature and society*, command us to entreat your royal attention."[2] Thus constantly, down to the last moment, did our fathers set forth the principles they sought to establish as essential to free government. Thus constantly did they testify to the cause for which I now plead.

Answering voices came back from England, announcing the principles in issue. The right of taxation was asserted; but there were many who disguised the tyranny by assuming that the Colonies were "virtually represented." Perhaps that spirit of legal technicality which is satisfied by form at the expense of reason was never more strikingly illustrated than in the argument of Sir James Marriott, the Admiralty Judge, who gravely insisted, in the House of Commons, that England "had an undoubted right to tax America, because she was represented by the members for the County of Kent, of which the thirteen provinces were a part or parcel, for in their charters they were to hold of the manor of Greenwich in Kent."[3] The whole pretension had been scouted by the indignant eloquence of Mr. Pitt, afterward Lord Chatham. "The idea," said he, "of a *virtual representation* of America in this House is the most contemptible idea that ever entered into the head of a man. It does not deserve a serious refutation."[4]

[1] Journals of Congress, Vol. I. p. 60, October 26, 1774.

[2] Ibid., p. 70, October 26, 1774.

[3] Speech on Motion for withdrawing Confidence from Ministers, March 15, 1782: Hansard's Parliamentary History, Vol. XXII. col. 1184.

[4] Speech on the Address of Thanks, January 14, 1766: Ibid., Vol. XVI. col. 100.

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As the controversy continued, and especially as those masterly state papers, the addresses of the Continental Congress, reached England, the ministers of the king were put on the defensive. They retained as advocate none other than Samuel Johnson, who, for "small hire," lent the pen which had written "Rasselas," "The Vanity of Human Wishes," and the English Dictionary, to a rancorous attack on the principles of our fathers. Its concentrated venom was all expressed in the title, "Taxation no Tyranny." Another pamphlet appeared in reply, with the epigram, "Resistance no Rebellion," embodying the idea, that, where there is taxation without representation, resistance is justifiable; and thus was issue joined at London. This was in 1775. Already the "embattled farmers" had gathered at Lexington and Bunker Hill; already Washington had drawn his sword at Cambridge, as commander-in-chief and generalissimo of the new-born armies; already war had begun. At last, to the defiant watchword, "Taxation no Tyranny," hurled from London, our fathers returned that other defiant watchword, "Independence." But they did not turn their backs upon the principles asserted throughout the long controversy. Independence was the means to an end, and that end was nothing less than a Republic, with Liberty and Equality as animating principles, where government stood on the consent of the governed, or, which is the same thing, where there should be no taxation without representation: for here was the distinctive feature of American institutions.

2. The principles heralded through fifteen years of controversy were not forgotten when Independence was

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declared: and here I come to the national declarations of the Fathers.

It sometimes happens that men fail in support of the cause to which they are pledged, or content themselves with something less than the truth. But not so with our fathers. In declaring Independence they continued loyal to their constant vows. The natural rights of all men, and the consent of the people as the only just foundation of government, which James Otis first announced, which Samuel Adams maintained with severe simplicity, which Patrick Henry vindicated even against the cry of "Treason," and which had been affirmed by legislative bodies and public meetings, were embodied in the opening words of the Declaration. There they stand, like a sublime overture to the new Republic, interpreting, inspiring, and filling it with transforming power.

"We hold these truths to be *self-evident*: that *all men are created equal*; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men, *deriving their just powers from the consent of the governed.*"

Nor did these declarations proceed from the National Congress alone. The States spoke also in their Bills of Rights.

Foremost is the Equality of All Men. Of course, in a declaration of rights, no such supreme folly was intended as that all men are created equal in form or capacity, bodily or mental, — but simply that they are created equal in rights. This is grandest of the self-evident truths announced, leading and governing all the rest. Life, liberty, and the pursuit of happiness are

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among inalienable rights; but they are all in subordination to that primal truth. Here is the starting-point of the whole; and the end is like the starting-point. Announcing that governments derive their just powers from the consent of the governed, the Declaration repeats the same proclamation of Equal Rights. Thus is Equality the Alpha and the Omega, wherein all other rights are embraced. Men may not have a natural right to certain things, but most clearly they have a natural right to *impartial laws*, without which justice, being the end and aim of government, must fail. Equality in rights is the first of rights. Because these self-evident truths, beginning with Equality, had been set at nought by Great Britain, in her relations with our fathers, Independence was declared. To these truths, therefore, was the new Government solemnly dedicated, as it assumed its separate and equal station among the powers of the earth. Do you ask for the definition of Republic? Here it is, by patriot lexicographers, whose authority none of us can question.

As the War of Independence began with a declaration of principles, so it ended with a like declaration. At its successful close, the Continental Congress, in an Address to the States, by the pen of James Madison, thus announced the objects for which it had been waged, and thus supplied another definition of the new government: —

"Let it be remembered that it has ever been the pride and boast of America, *that the rights for which she contended were the rights of human nature.* By the blessing of the Author of these rights on the means exerted for their defence, they have prevailed against all opposition, and *form the basis* of thirteen independent States. No instance has

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heretofore occurred, nor can any instance be expected hereafter to occur, in which *the unadulterated forms of Republican Government* can pretend to so fair an opportunity of justifying themselves by their fruits. In this view, the citizens of the United States are responsible for the greatest trust ever confided to a political society."[1]

Such, also, was the sublime sentiment promulgated by Washington from his camp, in a general order, near the same date, announcing the close of the war, where he declares his "rapture" in the national prospects, and the three-fold happiness for all "who have assisted in protecting *the rights of human nature*."[2] It was for "the rights of human nature" that our fathers went forth to battle, and these rights are proclaimed to "form the basis of thirteen independent States." But supreme among these is Equality, including of course the equal right of all to a voice in the Government. And this is the Republic which our fathers, with pride and boast, then gave as an example to mankind.

The same spirit appears in the National Constitution, which, by its preamble, asserts practically similar sentiments: —

"We, the people of the United States, in order to form a more perfect union, *establish justice*, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Thus was the National Constitution ordained, not to create an oligarchy or aristocracy, not to exclude certain persons from the pale of its privileges, not to organize

[1] Journal of Congress, April 26, 1783, Vol. VIII. p. 201.
[2] Writings, ed. Sparks, Vol. VIII. pp. 567, 568, Appendix, No. XIII.

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inequality of rights in any form, but to "establish justice," which is Equality, — to "insure domestic tranquillity," which is vain without justice, — to "provide for the common defence," which is the defence of all, — to "promote the general welfare," which is the welfare of all, — and to "secure the blessings of liberty" to all the people and their posterity, which is giving to all the complete enjoyment of rights central among which is Equality. Here, then, is another authoritative definition.

Thus has our country testified to its idea of a Republic, not only throughout long days of controversy, but in national declarations, being in themselves monumental acts.

3. From these national declarations I come now to the *Opinions of the Fathers.* Here you see how these same principles have been sustained by eminent characters, whose names are historic, all testifying to the government they founded and upheld. In their weighty words you find a definition, constantly repeated, in harmony with all the promises of the Fathers, whether in controversy or in solemn instruments which are the very title-deeds of the Republic.

I begin with Benjamin Franklin, who saw all questions of Government with a surer instinct than any other person in our history. As early as 1736, while still a young man, he wrote an article, which was published in the Pennsylvania Gazette, containing these words: —

"Popular Governments have not been framed without the wisest reasons. It seemed highly fitting that the conduct of

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magistrates, *created by and for the good of the whole*, should be made liable to the inspection and animadversion of *the whole*." [1]

It is for *the good of the whole*, and not for an odious oligarchy or an aristocratic class, that our patriot speaks, and in these words is foreshadowed the idea of a republican government. But it was in discussions, after Otis had hurled his flaming bolt, that we find a fuller and more precise definition. Here it is, as adopted, if not written, by Franklin: —

"That *every man* of the commonalty (excepting infants, insane persons, and criminals) is, of common right, and by the laws of God, a freeman, and entitled to the free enjoyment of liberty.

"*That liberty, or freedom, consists in having an actual share in the appointment of those who frame the laws*, and who are to be the guardians of every man's life, property, and peace: for the *all* of one man is as dear to him as the *all* of another; and the poor man has an *equal* right, but *more* need, to have representatives in the Legislature than the rich one.

"That they who have no voice nor vote in the electing of representatives *do not enjoy liberty, but are absolutely enslaved to those who have votes, and to their representatives*: for to be enslaved is to have governors whom *other men have set over us*, and be subject to laws *made by the representatives of others*, without having had representatives of our own to give consent in *our* behalf." [2]

In these emphatic words is a complete vindication of the *equal right* of representation, as essential to free government, — so much so, that, where this does not exist, Liberty does not exist.

[1] On Government, No. I.: Works, ed. Sparks, Vol. II. p. 279.
[2] Some Good Whig Principles: Ibid., pp. 372, 373.

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Jefferson followed Franklin in the same vein, but with greater fervor. The author of the Declaration of Independence could not do otherwise. Constantly he testifies to his idea of a Republic. Thus he wrote to Alexander von Humboldt, under date of June 13, 1817, affirming the rights of the majority as "the first principle of Republicanism," and assuming the principle of Equal Rights: —

"The first principle of Republicanism is, that the *lex majoris partis* is the fundamental law of every society of individuals *of equal rights*. To consider the will of the society enounced by the majority of a single vote as sacred as if unanimous is the first of all lessons in importance, yet the last which is thoroughly learnt. This law once disregarded, no other remains but that of force, which ends necessarily in military despotism." [1]

In another letter, to John Taylor, of Caroline, dated May 28, 1816, he thus defines a Republic: —

"Indeed, it must be acknowledged that the term *Republic* is of very vague application in every language. Witness the self-styled Republics of Holland, Switzerland, Genoa, Venice, Poland. Were I to assign to this term a precise and definite idea, I would say, purely and simply, it means *a government by its citizens in mass*, acting directly and personally, *according to rules established by the majority*, — and that every other government is more or less republican in proportion as it has in its composition more or less of this ingredient of the direct action of the citizens." [2]

Here again, while confessing the unquestionable vagueness of the term according to old examples, he assumes that in a republic all citizens must have a

[1] Writings, Vol. VII. p. 75. [2] Ibid., Vol. VI. p. 605.

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voice. And again, in the same letter, he thus indignantly condemns denial of representation: —

"And also that one half of our brethren who fight and pay taxes are excluded, like Helots, from the rights of representation, as if society were instituted for the soil, and not for the men inhabiting it, *or one half of these could dispose of the rights and the will of the other half without their consent.*" [1]

Thus did he scout the whole wretched pretension of oligarchy and monopoly by which citizens are deprived of equal rights.

To these may be added his earliest and latest declarations on this important question. The earliest is in his "Notes on Virginia," written in 1781, where he recognizes "a reciprocation of right" as a presiding principle: —

"When arguing for ourselves, we lay it down as a fundamental, that laws, to be just, must give *a reciprocation of right:* that without this they are mere arbitrary rules of conduct, founded in force, and not in conscience." [2]

The latest declaration was in 1826, the year of his death. It is in a paper containing some of his most intimate opinions. Here he bears testimony to "*equality* among our citizens" as "essential to the maintenance of republican government." [3] These are among his dying words.

Madison was colder in nature than Jefferson; but they were associates in opinion, as in political life. In the debates on the National Constitution the former condemned the denial of rights on account of color: —

[1] Writings, Vol. VI. p. 607.
[2] Notes on Virginia, Query XIV.: Ibid., Vol. VIII. p. 385.
[3] Thoughts on Lotteries, February, 1826: Ibid., Vol. IX. p. 508.

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"We have seen the mere distinction of color made, in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man." [1]

Speaking directly of the right of suffrage, he uses the following language: —

"*The right of suffrage is certainly one of the fundamental articles of republican government*, and ought not to be left to be regulated by the legislature. A gradual abridgment of this right has been the mode in which *aristocracies* have been built on the ruins of popular forms." [2]

Thus declaring himself against "aristocracies," he naturally recognized the true idea; and here he was perplexed by the question of a property qualification, and the effort to reconcile it with "the right of suffrage," which he calls "a fundamental article in republican constitutions." [3] In another place, he says of "confining the right of suffrage to freeholders": "It violates *the vital principle* of free government, that those who are to be bound by laws ought to have a voice in making them; and the violation would be more strikingly unjust as the lawmakers become the minority." [4] Completely recognizing the great American principle, that just government can stand only on "the consent of the governed," he is brought to this conclusion: —

"Under every view of the subject, it seems indispensable that the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them." [5]

[1] Debates in the Federal Convention, June 6, 1787: Madison Papers, Vol. II. pp. 805, 806.

[2] Ibid., August 7, 1787, Vol. III. p. 1253.

[3] Ibid., Note to Speech of August 7, 1787, Appendix, No. 4, Vol. III. p. ix.

[4] Ibid., p. xii.

[5] Ibid., p. xiii.

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In one of the most remarkable chapters of the "Federalist," Madison gives expansion to this idea in his formal definition of a Republic: —

"If we resort for a criterion to the different principles on which different forms of government are established, we may define a Republic to be, or at least may bestow that name on, *a government which derives all its powers directly or indirectly from the great body of the people*, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. *It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion*, OR A FAVORED CLASS OF IT: otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of Republic."[1]

Thus, in few significant words, does this authority teach that a Republic is a government derived from "the great body of the people," and not from "a favored class of it." Better words could not be found for the American definition.

I repeat these two conditions of republican government according to Madison: *First*, the government must be derived from the *great body* of the people; and, *secondly*, it cannot spring from any *favored class*.

That the colored race should not be excluded from this definition may be justly inferred from his remark, already quoted, that "where Slavery exists the *republican* theory becomes still more fallacious,"[2] and also from his correspondence at a later day with Lafayette, whose devotion to the great principle of Equal

[1] Federalist, No. XXXIX.

[2] Letters and other Writings, Vol. I. p. 322.

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Rights was blazoned before the world. Writing to the latter, November 25, 1820, he said:—

"The Constitutions and laws of the different States are much at variance in the civic character given to free persons of color: those of most of the States, not excepting such as have abolished Slavery, imposing *various disqualifications*, which *degrade* them from the rank and rights of white persons. *All these perplexities develop more and more the dreadful fruitfulness of the original sin of the African trade.*" [1]

"Various disqualifications which degrade them"; "dreadful fruitfulness": such are some of the terms in which judgment is recorded. Another letter, also to Lafayette, written as late as February 1, 1830, says:—

"Outlets for the freed blacks are alone wanted for a rapid erasure of the blot [of Slavery] from our *Republican character*." [2]

Thus, in his opinion, was the treatment of this unhappy people inconsistent with the "Republican character."

Hamilton follows with perhaps equal authority. Though approaching political questions from opposite points of view, we find him uniting with Franklin, Jefferson, and Madison. Here is a glimpse of the definition he would supply:—

"As long as offices are *open to all men* and *no constitutional rank* is established, it is pure republicanism." [3]

Not for an oligarchy, but for *all*, is a Republic created. Then again he testifies for Equal Rights, and against *partial distinctions*:—

[1] Letters and other Writings, Vol. III. p. 190.
[2] Ibid., Vol. IV. p. 60.
[3] Remarks in the Federal Convention: Works, Vol. II. pp. 416, 417.

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"There can be no truer principle than this, that *every individual of the community at large has an equal right to the protection of Government.* . . . . We propose *a free government.* Can it be so, if *partial distinctions* are maintained?"[1]

Again he says, in positive words: —

"A share in the sovereignty of the State, which is exercised by the citizens at large in voting at elections, is one of the most important rights of the subject, *and in a Republic ought to stand foremost in the estimation of the law.* It is that right by which we exist a free people."[2]

He then exhibits the crowning lesson: —

"The principles of the Revolution taught the inhabitants of this country to risk their lives and fortunes in asserting their liberty, or, in other words, *their right to a share in the government.* That portion of the sovereignty to which each individual is entitled can never be too highly prized. It is that for which we have fought and bled."[3]

More could not be said in the few words. But it is when Hamilton comes to consider the National Constitution and to expound its provisions, that, while recognizing the anomalous condition of Slavery, and exposing what he calls "the compromising expedient of the Constitution" by which "*the slave* is divested of two fifths of *the man*," he yet declares "the equal level of free inhabitants," and announces, "that, if the laws were to restore the rights which have been taken away, *the negroes could no longer be refused an equal share of representation with the other inhabitants.*" Here is this important text, — which has additional authority when it is considered that it was attributed also to Madison,

[1] Remarks in the Federal Convention: Works, Vol. II. p. 418.
[2] Phocion, Letter II.: Ibid., pp. 315, 316.
[3] Ibid., p. 316.

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and indeed claimed by him, who thus acknowledged the sentiments as his own: —

"It is only under the pretext that the laws have transformed the negroes into subjects of property, that a place is denied to them in the computation of numbers; AND IT IS ADMITTED, THAT, IF THE LAWS WERE TO RESTORE THE RIGHTS WHICH HAVE BEEN TAKEN AWAY, THE NEGROES COULD NO LONGER BE REFUSED AN EQUAL SHARE OF REPRESENTATION WITH THE OTHER INHABITANTS."[1]

Thus, according to Hamilton, if the slaves are restored to the rights which have been taken away, — in other words, if they become freemen, — they will be on the same *equal level*, and entitled to the same *equal share* of representation with the other inhabitants. The two ideas of Equality and a Right to Representation, so early and constantly avowed by the Fathers, are here again recognized as essential conditions of government; and this is the true definition of a Republic.

With these great representative names to illustrate the American idea I might close the catalogue. Surely this is sufficient. But there are others, whose authority cannot be disregarded.

Here is the testimony of that inflexible spirit, who had thought and acted much, Samuel Adams, in a letter to his kinsman, John Adams: —

"That the sovereignty *resides in the people* is a political doctrine which I have never heard an American politician seriously deny. . . . . *We, the people*, is the style of the

[1] The Federalist, No. LIV. — J. C. Hamilton, in the Historical Notice prefixed to his edition of the Federalist (Philadelphia, 1864), furnishes strong grounds for ascribing this important paper to his father. See pp. xcv - cvi, and cxix - cxxvii.

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Federal Constitution. They adopted it; and, conformably to it, they delegate the exercise of the powers of government to particular persons, who, after short intervals, resign their powers *to the people*, and they will reëlect them, or appoint others, as they think fit."[1]

Here also is the testimony of another Republican, who signed the Declaration of Independence, Roger Sherman, in a letter to John Adams:—

"What especially denominates it a *Republic* is its dependence on the *public* or *people at large*, without any hereditary powers. But it is not of so much importance by what appellation the government is distinguished as to have it well constituted *to secure the rights and advance the happiness of the community*."[2]

There also was John Adams himself, who was the least distinct of all the Fathers on this question; but we find in the Preface to his Defence of the American Constitutions a passage full of prophetic meaning:—

"Thirteen governments, thus founded on *the natural authority of the people alone*, without a pretence of miracle or mystery, and which are destined to spread over the northern part of that whole quarter of the globe, are a great point gained in favor of *the rights of mankind*."[3]

Here is a plain assertion that our Thirteen States were founded "on the natural authority of the people alone," and that they were destined to spread over all North America.

[1] Correspondence between John Adams and Samuel Adams on Government, Letter IV., November 20, 1790: Works of John Adams, Vol. VI. p. 421.

[2] Correspondence on the Constitution, Letter I., July 20, 1789: Ibid., p. 437.

[3] Works, Vol. IV. p. 293.

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Charles Pinckney, in a speech on the adoption of the Constitution, speaks for South Carolina: —

"The doctrine of representation is the fundamental of a republic. . . . . As to the United Netherlands, it is such a confusion of states and assemblies, that I have always been at loss what species of government to term it. According to my idea of the word, it is not a republic; for I conceive it as indispensable in a republic that all authority should flow from the people. . . . . A republic is *where the people at large*, either collectively or by representation, form the Legislature." [1]

Luther Martin, an able representative of Maryland in the Convention, while vindicating a prohibition or tax on the importation of slaves, said: —

"The privilege of importing them was unreasonable; and it was inconsistent with the principles of the Revolution, and dishonorable to the American character, to have such a feature in the Constitution." [2]

Afterwards, in his address to the Legislature of Maryland, he announced that both in the Committee and in the Convention he was influenced by the argument, —

"that Slavery is inconsistent with *the genius of republicanism*, and has a tendency to destroy those principles on which it is supported, *as it lessens the sense of the Equal Rights of mankind*, and habituates us to tyranny and oppression." [3]

Thus was a "sense of the Equal Rights of mankind" one of the principles on which Republicanism rested.

[1] Speech in the South Carolina Convention, May 14, 1788: Elliot's Debates (2d edit.), Vol. IV. pp. 326, 328.

[2] Debates in the Federal Convention, August 21, 1787: Madison Papers, Vol. III. p. 1388.

[3] Elliot's Debates, Vol. I. p. 374.

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And here is one more word from Virginia: it is Colonel Mason, who always spoke with so much point: —

"The true idea, in his opinion, was, that *every man*, having evidence of attachment to and permanent common interest with the society, ought to share in all its rights and privileges." [1]

Again we have a plain recognition of the Revolutionary idea.

Here, also, is another authority. I quote a Virginia writer on Government, — John Taylor, of Caroline: —

"The end of the guaranty is 'a republican form of government.' The meaning of this expression is not so unsettled here as in other countries, because we agree in one descriptive character as essential to the existence of a republican form of government. *This is representation. We do not admit a government to be even in its origin republican, unless it is instituted by representation;* nor do we allow it to be so, unless its legislation is also founded upon representation." [2]

I close this array, illustrative of opinion, with the words of Daniel Webster, in harmony with the rest: —

"Now, fellow-citizens, I will venture to state, in a few words, what I take these American political principles in substance to be. They consist, as I think, in the first place, in the establishment of popular governments on the basis of representation. . . . . *This representation is to be made as equal as circumstances will allow.*" [3]

Then again, on another occasion, he said: —

[1] Debates in the Federal Convention, August 7, 1787: Madison Papers, Vol. III. p. 1252.

[2] Construction Construed, p. 312.

[3] Address at laying the Corner-Stone of the Addition to the Capitol, July 4, 1851: Works, Vol. II. p. 601.

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"This is the true idea of a State. It is an organized government, representing *the collected will of the people*, as far as they see fit to invest that government with power."[1]

Thus, at every stage, from the opening, when Otis announced the master principle, "Taxation without representation is Tyranny," all along to Daniel Webster, we find "Representation" an essential element in the American definition of republican government.

4. From authoritative opinions I pass to *public acts*, which testify to the true idea of republican government. These are of two classes: first, by the United States, in their collective character; and, secondly, by the States individually.

Looking at the States in their collective character, we find that at the adoption of the National Constitution they refused to recognize any exclusion from the elective franchise on account of race or color. The Fathers knew too well the requirements of a republican government to sanction such exclusion. Recognizing Slavery as a transitory condition, soon to cease, they threw over it a careful oblivion; but they were none the less jealous of the rights of all freemen. *The slave did not pay taxes*, and, so far as he was a person and not property, he was part of the family of his master, by whom he was represented, so that in his case the commanding principle of the Revolution was not disturbed. But, becoming a freeman, the slave stepped at once within the pale of taxation, and therefore necessarily of representation,

[1] Argument in the Supreme Court of the United States, in the Case of Luther *v.* Borden, January 27, 1848: Works, Vol. VI. p. 222.

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since the two are inseparable. And this consideration was the guide to our fathers.

The Continental Congress refused point-blank to insert the word "white" in the Articles of Confederation. The question came up, June 25, 1778, on these words: "THE FREE INHABITANTS of each of these States (paupers, vagabonds, and fugitives from justice excepted) shall be entitled to all privileges and immunities of FREE CITIZENS in the several States." The delegates from South Carolina moved, in behalf of their State, to limit this guaranty to "free WHITE inhabitants." On the question of inserting the word "white," eleven States voted,—two in favor of the insertion, one was divided, and eight were against it. South Carolina, not disheartened, made another attempt, by moving to add, after the words "the several States," the further clause, "according to the law of such States respectively for the government of their own FREE WHITE inhabitants," — thus seeking again to limit the operation of the guaranty. This proposition was voted down by the same decisive majority of eight to three. And thus did our fathers testify to the right of representation without distinction of color. On other occasions, for successive years, they constantly gave the same testimony.

A resolution of Congress in April, 1783, seconded by the report of a Grand Committee, of which Mr. Jefferson was Chairman, in April, 1794, recommended an Amendment of the Articles of Confederation, whereby the war expenses should be apportioned among the several States according to "the whole number of white and *other free citizens and inhabitants*," — thus positively embracing colored persons. In the Act for the Temporary Government of the Territory "ceded or to be

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ceded" to the United States, April 23, 1784, and drawn by Jefferson, the voters are declared to be the "free males of full age," without distinction of color. In the famous Ordinance for the Government of the Northwestern Territory, drawn by Nathan Dane, of Massachusetts, adopted by the Confederation July 13, 1787, and then reënacted by our Congress after the adoption of the Constitution, the voters are declared to be "free male inhabitants of full age,"—again without distinction of color. Then came successive Acts of Congress for the government of Territories, where the rule in the Ordinance for the Northwestern Territory was followed, and there was no distinction of color. If this rule changed, it was only when the partakers in the Revolution and the authors of the Constitution ceased to exercise influence over public affairs. The testimony of the Fathers was constant, and it is only of this that I speak.

Turning from the States collectively, and looking at them individually, we find the same testimony. By the Constitution of New Hampshire, at the adoption of the National Constitution, the suffrage was vested in "every male inhabitant of each town and parish," with certain qualifications, but without exclusion on account of color. By the Constitution of Massachusetts the suffrage was vested in "every male inhabitant," with certain specified qualifications, but without distinction of color. Rhode Island, at the adoption of the Constitution, was under her original colonial charter, which provided for elections by "the major part of the freemen of the respective towns or places," without distinction of color. Connecticut was likewise under her original colonial charter,

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which also provided for elections by "the major part of the freemen of the respective towns, cities, and places," without distinction of color. By the Constitution of New York the suffrage was vested in "every male inhabitant of full age," with certain specified qualifications, but without distinction of color. By the Constitution of New Jersey it was vested in "all inhabitants of this Colony of full age," with certain specified qualifications, but without distinction of color. By the Constitution of Pennsylvania it was vested in "every freeman of the full age of twenty-one years," with certain specified qualifications, but without distinction of color. By the Declaration of Rights prefixed to the Constitution of Delaware it was announced that "every freeman, having sufficient evidence of a permanent common interest with and attachment to the community, hath a right of suffrage," without distinction of color; and in the Constitution the suffrage was vested in "the freemen and inhabitants of the respective counties," with certain specified exceptions, but without distinction of color. By the Constitution of Maryland the suffrage was vested in "all freemen above twenty-one years of age," with certain specified qualifications, but without distinction of color. By the Constitution of North Carolina the suffrage was vested in "all freemen of the age of twenty-one years," with certain specified qualifications, but without distinction of color; and this rule continued down to 1836, when the Constitution was amended, or rather, let me say, perverted. That eminent citizen, Judge Gaston, of North Carolina, in giving judgment at a later day, said: "It is a matter of universal notoriety, that *free persons, without regard to color, claimed and exercised the fran-*

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chise."[1] To these States I add Tennessee, which was carved out of North Carolina, and followed her benign example. Her Constitution, adopted in 1796, vested the suffrage in "every freeman of the age of twenty-one years," with certain qualifications, but without distinction of color; and this rule continued down to the perversion of the Constitution in 1834. Mr. Cave Johnson, of Tennessee, once Postmaster General, is reported to have said that he was originally elected to Congress by the votes of colored persons, and I have heard Mr. John Bell make the same confession with regard to himself.

Virginia was inconsistent and uncandid. By the Declaration of Rights prefixed to her Constitution it was announced that "ALL MEN, having sufficient evidence of permanent common interest with and attachment to the community, have the right of suffrage," without distinction of color; and it is added, that they "*cannot be taxed or deprived of their property for public uses without their own consent* or that of their representatives so elected, nor bound by any law to which they have not in like manner assented for the public good." This was entirely worthy of the eminent citizens who adorned that State. But a subsequent provision of the Constitution preserved the right of suffrage "as exercised at present": thus embodying, without naming, the legislative exclusion of free negroes, mulattoes, and Indians, "although such persons be freeholders." This discreditable manœuvre becomes more notable in view of an incident in the early history of Virginia, curious and important, and also applicable to all the States during their colonial existence. It was on the enactment of a statute in 1723, "that no free negro, mulatto, or

[1] The State *v.* Manuel, 4 Devereux and Battle, R., 25.

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Indian whatsoever shall hereafter have any vote at the election of burgesses, or any other election whatsoever,"[1] when the tyranny here manifest was rebuked with unexpected plainness. The legal authority in England, to whom this colonial statute was submitted for review and approval, reported, in admirable words:—

"I cannot see why one freeman should be used worse than another *merely upon account of his complexion*. . . . To vote at elections of officers, either for a county or parish, &c., is incident to every freeman who is possessed of a certain amount of property."[2]

Georgia was fitful. By her Constitution of 1777, in existence immediately anterior to the National Constitution, suffrage was confined to "male *white* inhabitants." But a Constitution adopted May 6, 1789, and another adopted May 30, 1798, accorded suffrage to "citizens and inhabitants," with certain specified qualifications, but without the word "white."

It only remains to speak of South Carolina, the persistent marplot of republican institutions, where, by the Constitution, the suffrage was vested in "every free *white* man, and no other person," with certain specified qualifications. This was the only State among the original Thirteen, unless Georgia be grouped with South Carolina, which at that time allowed a color discrimination in its Constitution. It was the only State which, after uniting in a National Declaration that "all men are created equal," openly and audaciously commenced

[1] Hening, Statutes at Large, Vol. IV. pp. 133, 134.

[2] Opinion of Richard West, January 16, 1723, addressed to the Right Honorable the Lords Commissioners of Trade and Plantations, on an Act of Virginia "tending to prevent free black men from voting at elections." — CHALMERS, *Opinions of Eminent Lawyers on Various Points of English Jurisprudence, chiefly concerning the Colonies*, Vol. II. p. 113.

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the example of "a white man's government." This apostate idea, which has since played such a part as a disturber of the national peace, was then and there born, as the opposite idea was born in Massachusetts, under the inspiring words of James Otis. And the other States, in their Constitutions, followed this patriot voice. They spoke of "persons," "inhabitants," "freemen," or, better still, "men," without prefix of "white." Color was not mentioned. But even in South Carolina, which introduced the discreditable tyranny into her Constitution, this exclusion was more apparent than real. In point of fact, even as late as 1790, when the first census was taken, there were in this State only one thousand eight hundred and one free colored citizens. Of course their exclusion was wrong, mean, and unrepublican; but I do not assert that it was such a case as to justify the interference of the nation to reform it, especially where there was no lapse of the State Government. On the other hand, its sufferance cannot be interpreted as a waiver of the principles for which the Revolution was fought. But even in South Carolina there had been a spasm of virtue. In 1757 there was a "flourishing negro school" at Charleston, and in 1709 we find a complaint that "even negroes" had been admitted to vote. Though denounced as an abuse, the precedent is authenticated by a disgusted inhabitant.[1]

Such are the public acts of the States, collectively and individually, at the adoption of the National Constitution, illustrating with rare harmony the American idea of a Republic, and testifying against any exclusion

[1] Petition of Joseph Boone to the Lords Proprietors of Carolina: Dalcho, Historical Account of the Protestant Episcopal Church in South Carolina, p. 88. See, also, p. 178.

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founded on color. Add to these, that the National Constitution, carefully excepting from the basis of Representation "Indians *not taxed*," pays open homage to the principle that there can be no taxation without representation; add then that it expressly founds the Government upon "the people," not only in the preamble, which begins "We the people," but also in providing that the House of Representatives shall be "chosen by the people of the several States"; add also the crowning fact, that it recognizes no distinction of color, that it treats all with the same impartial justice, that the word "white" does not appear there, and who are we, Sir, who dare foist into this Magna Charta an oligarchical idea which finds no sanction in its republican text?

Here I bring this part of the argument to a close. We have seen the origin of the controversy which led to the Revolution, when Otis, with such solid claim, insisted upon Equal Rights, and then, giving practical effect to the grand demand, sounded the battle-cry, "Taxation without Representation is Tyranny"; we have followed the controversy in its anxious stages, where these principles were constantly asserted and constantly denied, until it broke forth in battle; we have seen these principles adopted as the very frontlet of the Republic, when it assumed its place in the family of nations, and then again when it ordained its Constitution; we have seen them avowed and illustrated in memorable words by the greatest authorities of our history; lastly, we have seen them embodied in public acts of the States collectively and individually; and now, out of this concurring, cumulative, and unimpeachable tes-

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timony, constituting a speaking aggregation absolutely without precedent, I offer you the American definition of a Republican form of government. In vain do you cite philosophers or publicists, or the examples of former history. Against these I put the early and constant postulates of the Fathers, the corporate declarations of the Fathers, the avowed opinions of the Fathers, and the public acts of the Fathers, all with one voice proclaiming, first, that all men are equal in rights, and, secondly, that government derives its just powers from the consent of the governed; and here is the American idea of a Republic, which must be adopted in the interpretation of the National Constitution. You cannot reject it. As well reject the Decalogue in determining moral duties, or reject the multiplication-table in determining a question of arithmetic.

Counter to this irresistible conclusion there can be only one suggestion having any seeming plausibility, and this is founded on the contemporary recognition of Slavery. On this point, it is enough, if I remind you, first, that our fathers did not recognize Slavery as a permanent part of our system, but treated it as exceptional and transitory, while they concealed it from view by words which might mean something else; secondly, that the slave was always regarded, legally and politically, as part of the family of his master, according to the nomenclature of Blackstone's Commentaries, much read at the time, where master and servant are grouped with husband and wife, parent and child, and, as in the case of wife and child, *the slave is represented by the head of the family, who also paid taxes on his account*, so that in his case the cardinal principle of the Revolution, associating representation and taxation to-

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gether, was not essentially violated; and, thirdly, that by the acts of the Continental Congress, and generally by the State Constitutions, all distinction of color was discarded in determining the elective franchise, and that illustrious expounders of the National Constitution, as if anticipating the very question before us, Alexander Hamilton and James Madison, announced in the "Federalist," IF THE LAWS WERE TO RESTORE THE RIGHTS WHICH HAVE BEEN TAKEN AWAY, THE NEGROES COULD NO LONGER BE REFUSED AN EQUAL SHARE OF REPRESENTATION WITH THE OTHER INHABITANTS. Such was the understanding, and such the promise, at the adoption of the Constitution. Such was the declared meaning of our fathers, according to the concurrent contemporary testimony of Hamilton and Madison. Therefore, while confessing sorrowfully the terrible inconsistency in recognizing Slavery, and throwing over their shame the mantle which the son of Noah threw over his father, we must reject every argument or inference on this account against the true idea of a Republic, which is none other than a government where all citizens have an *equal voice*. As Washington, by divine example, gave to mankind a new idea of political greatness, so did the Fathers, by inspired teaching, give to mankind a new idea of Government. Do you ask again for authority? I offer it in its many forms. It is the early Vocabulary of James Otis, Samuel Adams, Patrick Henry, and Benjamin Franklin; it is the Dictionary of the Revolution; it is the Lexicon of our National History; it is the Thesaurus of Public Acts. This new idea was the great discovery of our fathers. Rob them of this, and you take their highest title to gratitude. Columbus, venturing into an unknown sea, discovered

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a New World of Space; but our fathers, venturing likewise, discovered a New World of Public Duty. It is for us, their children, to profit by their discovery.

For determining the meaning of our own Constitution in a momentous requirement without precedent, American authority and example are enough; but I would not have you forget that the conclusion on which I rest is grandly sustained by France. Here I shall be brief.

I cannot begin with a higher name than Montaigne, who, though never defining a Republic, let drop words which, coming from such a master, are invaluable: —

"Popular rule seems to me the most natural and equitable." "Equality is the first part of equity."[1]

In the same spirit, Montesquieu, while failing to supply a precise definition, helped to elevate the idea of republican government, when he declared "virtue" its inspiration, and that virtue is the love of equality.[2] A kindred thought is expressed by a publicist of our time, in a remarkable study on Montesquieu, when he says, that "the true principle of democracy is justice."[3] But justice is equality.

Contemporary with Montesquieu was the Marquis d'Argenson, a minister of Louis the Fifteenth and the friend of Voltaire. In a work written as early as 1739, but not seeing the light till 1764, some time after his death, when it was attributed to Rousseau, this remarkable character gives utterance to words worthy of perpetual memory: —

[1] Essais, Liv. I. chs. 3, 19.
[2] See, *ante*, p. 149.
[3] P. Janet, Histoire de la Philosophie Morale et Politique, Tom. II. p. 371.

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"It is only necessary to lay aside the most stupid prejudice, to admit that two things are chiefly to be desired for the good of the State: one, that all the citizens shall be equal among themselves; the other, that each shall be the son of his works."[1]

A government where these two things are assured would be a Republic indeed.

Voltaire, though not professing to define a Republic, taught its dependence *upon equality*:—

"Civil government is *the will of all*, executed by one or by many *in virtue of laws for which all have voted*." "The republican is undoubtedly the most tolerable of all governments, because it is that which brings men most nearly to natural equality."[2]

In another place the same illustrious teacher said:—

"The people never desire, and never can desire, anything but Liberty and Equality."[3]

Advancing in time, the Republic becomes more manifest. Omitting the fervid words of Jean Jacques Rousseau, I adduce Condorcet, whose consecration to truth was sealed by a tragical death:—

"I have ever thought that a Republican Constitution, *having Equality for its basis*, was the only one in conformity with Nature, with reason, and with justice,—the only one which could preserve the liberty of the citizens and the dignity of the human race."[4]

[1] Considérations sur le Gouvernement de la France, quoted by Henri Martin, Histoire de France, Tom. XV. p. 358. See, also, his Mémoires, Tom. III. p. 313, Tom. V. p. 312.

[2] Idées Républicaines, §§ 13, 43: Œuvres (1784), Tom. XXIX. pp. 190, 203.

[3] Dictionnaire Philosophique, art. DÉMOCRATIE: Ibid., Tom. XXXIX. p. 254.

[4] Ce que les Citoyens ont Droit d'attendre de leurs Représentants, 10 Avril, 1793: Œuvres, par O'Connor et Arago, (Paris, 1847-49,) Tom. XII. p. 567.

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Belonging to the ancient system of France, and, like Lafayette, with the rank of Marquis, Condorcet, again like Lafayette, not only accepted the Republic, but declared its true basis.

Another French authority, of eminent experience in diplomacy, who wrote coldly and only according to the requirement of reason, Gérard de Rayneval, asserts the same law of Equality:—

"Political Liberty consists in the right to participate in public affairs. This participation is direct or indirect, and it is more or less extended according to the form of government. It is, then, necessarily unequal. For example, *in a Democracy all the citizens participate in the legislative power.* If they delegate it, they have only a very indirect part in it; but all can become delegates or representatives, all can arrive at administrative employments, and all have the right to protest against abuses. In aristocratic republics political liberty is exclusively concentrated in the body of Notables; they alone exercise all the power; subjects have only civil liberty."[1]

Such, in France, is the voice of political science.

It is also the voice of the French Revolution. The one idea which that great event taught with prevailing influence was the Equal Rights of All, explained and defined by the new-born formula, that "all are equal before the Law." Napoleon recognized the supremacy of this principle, when, in an official address to the Council of State, he said, "France loves Equality above everything";[2] and he sought to enforce it, when, in an early proclamation, he declared, "Let there be no head

[1] Institutions du Droit de la Nature et des Gens (Paris, 1851), Tom. I. pp. 51, 52, Liv. I. ch. 5, § 4.

[2] Buchez et Roux, Histoire Parlementaire de la Révolution Française, Tom. XXXVIII. p. 458.

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which does not bend under the empire of Equality."[1] Such is human inconsistency, that shortly afterwards his own ambition refused to bend under this empire, which none the less disowned the sceptre he assumed and the nobles he created. But the great truth, though trampled down, survived in the hearts of the French people, to rise again and resume its heritage.

As the Provisional Government of 1848 proclaimed the Republic, it was careful, after proper deliberation, to proclaim at the same time "universal suffrage," which Lamartine, standing on the steps of the Hôtel de Ville, and speaking in the name of the Government, said was "the first truth and only basis of every National Republic."[2] This proclamation was itself submitted to the vote of "all the citizens"; and on the terms of this submission another member of the Government, of solid sense and perfect fidelity, thus expresses himself:—

"By these words — *all the citizens* — the Provisional Government intended to consecrate definitively the fundamental principle of democracy; it intended to proclaim boldly and forever the inalienable, imprescriptible right inherent in each member of society to participate directly in the government of his country; it intended to put in practice really and loyally the great principles hitherto shut up in the domain of the abstract theories of philosophy."[3]

The same person, M. Garnier-Pagès, who was at once an eminent actor in these scenes and their most authentic historian, thus again dwells on the true idea of a Republic:—

[1] Proclamation, 10 Juillet, 1802, pour l'Anniversaire du 14 Juillet, 1789: Correspondance du Napoléon I., No. 6180, (Paris, 1861, Imprim. Impér. 4to,) Tom. VII. p. 660.

[2] Garnier-Pagès, Histoire de la Révolution de 1848, Tom. V. p. 338.

[3] Ibid., p. 348.

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"The Republic, that government of *all by all*, where each has his place, his duty, and his right; the Republic, that is to say, Liberty itself, the liberty to do every act and to give utterance to every thought not prejudicial to others; the Republic, that fraternal ground where are admitted all parties, the representatives of the past as well as of the future, where all minds, all associations, can have free scope."[1]

This precise definition is fitly crowned by the remarkable words revealing the soul of De Tocqueville:—

"I should, I think, have loved Liberty at all times, but in the times in which we live I feel inclined to adore it. . . . . There is no legislator sufficiently wise and sufficiently powerful to maintain free institutions, *if he does not take Equality for first principle and symbol.* All our contemporaries, then, who would create or assure the independence and dignity of their fellow-men, must show themselves the friends of Equality; and the only worthy way of showing themselves such is to be so. Upon this depends the success of their holy enterprise."[2]

To the authentic testimony of modern France, in harmony with our own country, I add the definition of a very recent foreign publicist, who, after dwelling on Equality as the idol sentiment of a Republic, says:—

"This shows us the nature and the end of republican government. It is a government founded on the general interest and equality."[3]

Admirable words!—in themselves a definition. And here, before closing this testimony, let me call attention to two authorities, contemporary with our fathers, which stand apart,—one English, and the other German. The first is that of Dr. Richard Price, the friend of John

[1] Garnier-Pagès, Histoire de la Révolution de 1848, Tom. VII. p. 407.
[2] De la Démocratie en Amérique (14me édit.), Tom. III. pp. 526, 527, Ch. 7.
[3] Block, Dictionnaire de la Politique, art. RÉPUBLIQUE.

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Adams, who very early appreciated the American Revolution, and vindicated it before the world. Here is his idea of good government, compendiously expressed: —

"Legitimate government, as opposed to oppression and tyranny, consists only in the dominion of *Equal Laws* made with *common consent*, or of men over *themselves;* and not in the dominion of communities over communities, or of any men over other men."[1]

The German was none other than the great thinker, Emanuel Kant, who, in his speculations on Perpetual Peace, says, that to this end every state should be a Republic, which he defines —

"That form of government where *every citizen* participates by his representatives in the exercise of the legislative power, and especially in that of deciding on the questions of peace and war."[2]

The statement of Kant is as simple as Pure Reason, which is the title of his great work. It claims plainly for "every citizen" a share in the government, and is the deliberate conclusion furnished by this eminent philosopher, whose name, rarely quoted in politics, is an unimpeachable authority.

Such is the definition of a republican form of government, as found in the history, declarations, opinions, and public acts of the Fathers of our country, reinforced by the authority of foreign intelligence and the example of France. From this presentation of authorities not to be questioned we pass easily to another stage of the discussion, where the conclusion is the easy and irresistible sequence.

[1] Additional Observations on the Nature and Value of Civil Liberty (London, 1777), Introduction, p. ix.

[2] Wheaton, History of the Law of Nations (New York, 1845), p. 751.

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III.

BRINGING these lapsed States to the touchstone, we see at once their small title to recognition as republican in form. Authentic figures are not wanting. The census of 1860 discloses the population of the States in question.

States.	White Population.	Colored Population, Slave and Free, including Indians.
Alabama	526,271	437,930
Arkansas	324,143	111,307
Florida	77,747	62,677
Georgia	591,550	465,736
Louisiana	357,456	350,546
Mississippi	353,899	437,406
North Carolina	629,942	362,680
South Carolina	291,300	412,408
Tennessee	826,722	283,079
Texas	420,891	183,324
Virginia	1,047,299	549,019
	5,447,220	3,656,112

A glance at this table is enough. Taking the sum total of population in the eleven States, we find 5,447,220 whites to 3,656,112 colored persons; and you are now to decide, whether, in the discharge of imperative duties under the National Constitution, and bound to guaranty a republican form of government, you will disfranchise this latter mass, shutting them out from those Equal Rights promised by our fathers, and from all copartnership in the government of their country. They surpass in numbers, by at least a million, the whole population of the Colonies at the time our fathers raised the cry,

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"Taxation without Representation is Tyranny"; and now you are to decide whether to strip them of representation, while you subject them to grinding taxation by tariff and excise, acting directly and indirectly, dwarfing into insignificance everything attempted by the British Parliament. Our fathers could not bear a Stamp Act in making which they had no voice, and they braved terrible war with the most formidable power of the globe rather than pay a tax of threepence on tea imposed by a Parliament in which they were unrepresented. Are you ready, Sir, in disregard of this great precedent, and in disregard of all promises and examples of past history, to thrust a single citizen out of all representation in the Government, while you consume his substance with taxation, subject him to Stamp Acts, compel him to pay a duty of twenty-five cents a pound on tea, and then follow him with imposts in all the business of life? Clearly, if you do not recognize his title to representation, you must at least by careful legislation relieve him from this intolerable taxation. Some of the millions you thrust out already contribute largely to the public revenue. How, then, can you deny them representation? Their money is not rejected. Why reject their votes? But if you reject their votes, you cannot take their money. As you detect no color in their money, you ought to detect no color in their votes.

In this denial of the right to vote there is a surpassing tyranny, being nothing less than a confiscation of the highest property the citizen can possess. To take his money is robbery; to appropriate his house or land is spoliation; but house and land are less than the right by which the citizen is assured in all other

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rights. Lord Chief Justice Holt spoke as became one of England's greatest magistrates, when he said from the bench: "A right that a man has to give his vote at the election of a person to represent him in Parliament, there to concur to the making of laws which are to bind his liberty and property, is a most transcendent thing and of an high nature."[1] But this "most transcendent thing" is taken from a whole race on an excuse insulting to them as members of the human family.

Unhappily, too many people discern the wrong only when they personally feel its sting. Suppose now the case reversed, and white citizens in South Carolina despoiled of this "most transcendent thing" by the predominance of the colored race, so that "black" instead of "white" marks participation in government. But, if such discrimination is just where the white prevails, it would be equally just where the black prevails, and it would be as constitutional in one case as in the other. Unquestionably a black man's government is as constitutional as a white man's government. But the white man could not easily endure the degradation; nor can it be doubted that Congress would promptly insist that it was inconsistent with republican government, and would apply the proper remedy. Failing in this duty, what other discrimination could it arrest? The Anglo-Saxon might exclude the Celt; the Celt might exclude the Anglo-Saxon; both might exclude the German, and the fearful antagonisms of race would have full play. Other battles than the Boyne would be the signal of discord, and other parties than Orangemen would stalk upon the scene.

If, looking at these States together, the case is clear,

[1] Ashby v. White et als., Lord Raymond, R., 953.

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it becomes clearer when we look at them separately. Begin with Tennessee, which disfranchises 283,079 citizens, being more than a quarter of its whole "people." Thus violating a distinctive principle of republican government, how can this State be recognized as republican? The question is easier asked than answered. But Tennessee is the least offensive on the list. There is Virginia, which disfranchises 549,019 citizens, being more than a third its whole "people." There is Alabama, which disfranchises 437,930 citizens, being nearly one half its whole "people." There is Louisiana, which disfranchises 350,546 citizens, being one half its whole "people." There is Mississippi, which disfranchises 437,406 citizens, being much more than one half its whole "people." And there is South Carolina, which disfranchises 412,408 citizens, being nearly three fifths its whole "people." A republic is a pyramid standing on the broad mass of the people as a base; but here is a pyramid balanced on its apex. To call such a government "republican" is a mockery of sense and decency. A monarch "surrounded by republican institutions," as at one time was the boast of France, would be less offensive to correct principles, and give more security to Human Rights.

Plainly such a government is not a "democracy," where all the people assemble and govern in person; nor is it a "republic," where they assemble and govern by representatives, according to the distinction presented by Madison in the "Federalist."[1] A representative government is a government by the people, not less than a democracy, provided all the people are represented. Representation is a modern invention of incalculable

[1] No XIV.

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value to embody the will of the people. A republic, like a democracy, cannot tolerate inequality. Wherever a favored class appears, whether in one or the other, its republican character ceases. It may be an aristocracy or oligarchy, but it is not a democracy or a republic.

It is not difficult to classify our Rebel States. They are aristocracies or oligarchies. Aristocracy, according to etymology, is the government of the best. Oligarchy is the government of the few, being not even aristocracy, but an abuse of aristocracy, as despotism is the abuse of monarchy. Perhaps these States may be characterized in either way; and yet aristocracy, especially in origin, has something respectable, which cannot be attributed to a combination whose single distinctive element is color of the skin.

The eminent French publicist, Bodin, in his definition of aristocracy, says that it exists *where a smaller body of citizens governs the greater;*[1] and this definition has been adopted by others, especially by Montesquieu. But it is not satisfactory. Hallam, whose judgment is of the highest value, after discussing its merits, proposes the following most suggestive substitute:—

"We might better say, that the distinguishing characteristic of an *aristocracy* is the enjoyment of privileges *which are not communicable to other citizens simply by anything they can themselves do to obtain them.*"[2]

These words completely characterize the aristocracy of color; for this aristocracy is plainly in the enjoyment of privileges not communicable to other citizens by anything they can themselves do to obtain them. Are we not reminded that "the Ethiopian cannot change his

[1] De Republica, Lib. II. c. 6.
[2] Literature of Europe, Part II. ch. 4, § 52.

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skin," neither can we "make one hair white or black," and "which of you by taking thought can add one cubit unto his stature"? Aristotle, the great intelligence of Antiquity, whose illumination has reached everywhere, used congenial language, when, in reply to those who would have magistracy and power distributed unequally, according to some rule of personal superiority, he said, "If this is a correct rule, then complexion, or stature, or some similar advantage, might be made the excuse for superiority in civil rights"; and he illustrates the unreasonableness of such a rule by showing, that, in a company of musicians, the best flute is not given to the most noble, but to the artist who will use it best; thus making merit the only qualification, and discarding color, which is accidental and unchangeable.[1]

The famous French founder of the school of Doctrinaires, Royer-Collard, so remarkable for sententious thought, was in the habit of saying that "the sovereignty of Reason is superior to the sovereignty of the people." But both declare the equal rights of all. The rule of inequality is plainly unreasonable; and what a mockery is that sovereignty of the people which sanctions any denial of equal rights! In different spirit, the consummate French writer, Louis Blanc, devoted to reform, has declared that "the republic is above universal suffrage," — meaning that even universal suffrage cannot subvert it. But in each is Equality. Universal suffrage openly proclaims this right; and what is the republic without it?

To show that our Rebel States are aristocracies or oligarchies might suffice. But we must not forget, that, born of Slavery, they have the spirit of that ini-

[1] Politics, Book III. ch. 7 [12].

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quity, so that they are essentially of a low type. Founded on color of the skin, they are, beyond question, the most senseless and disgusting of all history. Would you learn to what they must incline? Listen to the frank words of the Venetian master, the famous Father Paul, while, in a state refined by art and elevated by glory, he counsels the privileged class how to use their powers. "If a noble," says he, "injure a plebeian, justify him by all possible means; but should that be found quite impossible, punish more in appearance than in reality. If a plebeian insult a noble, punish him with the greatest severity, that the commonalty may know how perilous it is to insult a noble."[1] Such is the terrible rule announced in a document which taught how to make the power of Venice perpetual. But this same spirit predominates still in the Rebel States. It rages there with more revolting cruelty than Venice ever witnessed. And such is the government now claiming recognition as "republican."

The pretension is hateful on another ground. It is nothing less than a caste, which is irreligious as well as unrepublican. A caste exists only in defiance of the first principles of Christianity and the first principles of a republic. It is heathenism in religion and tyranny in government. The Brahmins and the Sudras in India, from generation to generation, have been separated, as the two races are still separated in these States. If a Sudra presumed to sit on a Brahmin's carpet, he was punished with banishment. But our recent Rebels undertake to play the part of Brahmins, and exclude citizens, with better title than themselves, from essential

[1] Sarpi, Opinione come debba governarsi internamente la Republica di Venezia per avere il perpetuo Dominio, p. 13.

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rights, simply on the ground of caste, which, according to its Portuguese origin (*casta*), is only another term for race.

But the pretension is yet otherwise hostile to good government. Here is a monopoly on a gigantic scale and with an unprecedented field, in a country which sets its face against all monopolies as unequal and immoral. If any monopoly deserves unhesitating judgment, it must be that which absorbs the rights of others and engrosses political power. How vain to condemn the petty monopoly of commerce, while allowing this vast, all-embracing monopoly of Human Rights!

Clearly, most clearly, and beyond all question, such a government is not "republican in form." Call it oligarchy, call it aristocracy, call it caste, call it monopoly; but never call it a republic.

IV.

Of course such a government can exist only in defiance of the National Constitution, and it is *the duty of Congress* to interfere against it.

The guaranty is by the United States; therefore Congress must perform it; and, in the discharge of this eminent duty, it must affix the true meaning to the requirement, declaring what is a republican government, and supplying the long-sought definition. Here Congress is sole and final arbiter, binding all other branches of Government. Let a State make office hereditary, — let it shut from the courts all who have not the "blue blood" of ancient ancestry, — let it accord to a favored class controlling power and influence, — let it apply

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any discrimination on account of race or color, whether against Anglo-Saxons, Celts, or Germans, whether against black or white, — let it do any of these things, all so plainly inconsistent with constitutional requirement, and the legislative power of the nation must recall the State from its aberration, and bring it home to the republican standard.

President Johnson, in his recent annual message, says: —

"In case of the usurpation of the government of a State by one man or an *oligarchy*, it becomes a duty of the United States to make good the guaranty to that State of a republican form of government."

The President forgets to mention an aristocracy, and does not add, what is true, that the authority bound to make good the guaranty is the sole judge of the exigency. To this end everything centres in Congress, whose powers are commensurate with the occasion. In aid of the guaranty are those other words providing that Congress "shall have power to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States." Under this ample provision there is a duty to be performed, by any means that seem best. The jurisdiction is complete, and it is in Congress. If any authority were needed for this proposition, it would be found in the words of Chief Justice Taney himself, speaking for the Supreme Court of the United States: —

"The fourth section of the fourth article of the Constitution of the United States provides that the United States shall guaranty to every State in the Union a republican form of government, and shall protect each of them against in-

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vasion, and, on the application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

"*Under this article of the Constitution, it rests with Congress to decide what government is the established one in a State. For, as the United States guaranty to each State a republican government, Congress must necessarily decide what government is established in the State, before it can determine whether it is republican or not.*" [1]

In the exercise of this power two courses are open. One is to impose an irrepealable condition upon the unrepublican States, requiring them, before recognition, to re-form their governments to the satisfaction of Congress. The other, and more direct, is by Act of Congress, in performance of the guaranty, and according to the plenary authority "for carrying into execution the powers vested by the Constitution in the Government of the United States," to provide all needful safeguards in the unrepublican States, and especially to place the Equal Rights of All under the guardianship of National Law.

Against the exercise of this power there are but two arguments. First, that the Constitution, by providing that "the electors in each State shall have the *qualifications* requisite for electors of the most numerous branch of the State Legislature," has reserved to each State the power of excluding citizens merely on account of color, even though constituting more than a majority of the population. The other argument is, that, since certain States at the North have disfranchised the few colored persons within their borders, the United States are so far constrained by this example that they cannot

[1] Luther *v.* Borden et al.: 7 Howard, R., 42.

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protect the millions of freedmen in the Rebel States from disfranchisement, and cannot save the Republic from the peril of crying injustice. I know not which of these two arguments is the least reasonable, or rather, which is the most reprehensible. They are both unreasonable, and both reprehensible. They both do violence to the true principles of the National Constitution, if not to common sense.

It is true, that, according to the text of the Constitution, each State may determine the "qualifications" of electors; but this can have no application to an exigency like the present, where, at the close of a prolonged and desperate rebellion, the United States are obliged to guaranty to certain States a republican form of government. In the performance of this guaranty, the United States will look only at the essential elements of such a government, nor more nor less, without regard to State laws. But I am unwilling to rest the argument here. Even assuming that there has been no lapse of State governments, so as to bring the guaranty into operation, — assuming that we are in a condition of assured peace, — then I utterly deny that the power to determine the "qualifications" of electors can give any power to disfranchise actual citizens. It is "qualifications" only which the States can determine, — meaning by this limited term those requirements of personal condition regarded as essential to the security of the franchise. These "qualifications" cannot be in nature permanent or insurmountable. Color cannot be a "qualification," any more than size, or quality of hair. A permanent or insurmountable "qualification" is equivalent to deprivation of suffrage; in other words, it is the tyranny of taxation without representation, and this tyr-

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anny, I insist, is not intrusted to any State. This is the very ground taken by Mr. Madison, when defending the National Constitution in the Virginia Convention.

"Some States might regulate the elections on the principles of *Equality*, and others might regulate them otherwise. . . . . Should the people of any State, by any means, be deprived of the right of suffrage, *it was judged proper that it should be remedied by the General Government.* . . . . If the elections be regulated properly by the State Legislatures, the Congressional control will very probably never be exercised. The power appears to me satisfactory, and unlikely to be abused as any part of the Constitution."[1]

With these decisive words from a chief framer of the National Constitution, backed by the reason of the case, I dismiss this objection to the little consideration it deserves. And I dismiss to the same indifference the other objection, that our hands are tied because certain Northern States have done a wrong and mean thing. Pray, Sir, how can the failure of these States affect the power of Congress in a great exigency under the National Constitution? Duty here is identical with power. No matter if the power has been long dormant, it is none the less vital. It is like the slumbering statute which Cicero describes as a sword in the scabbard, *tanquam gladius in vagina.* It only remains that it be drawn forth.

This duty is fortified by the Constitutional Amendment, which, after providing for the abolition of Slavery, empowers Congress to "enforce" it by "appropriate legislation," thus heaping Ossa upon Pelion. Clearly, under these words, Congress may do what in its dis-

[1] Elliot's Debates (2d edit.), Vol. III. p. 367.

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cretion seems "appropriate" to this end, and there is no power to call its action in question. On this point the authority of the Supreme Court, in the weighty judgment of Chief Justice Marshall, is explicit.

"The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select *any appropriate means*, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception. . . . .

"Let the end be legitimate, let it be within the scope of the Constitution, and *all means* which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." [1]

These words of the Chief Justice are reinforced by a kindred declaration from another great authority, Mr. Justice Story, speaking also for the Supreme Court, on an important occasion.

"The Constitution unavoidably deals in general language. . . . . The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. . . . . Hence its powers are expressed in general terms, leaving to the Legislature from time to time *to adopt its own means to effectuate legitimate objects.*" [2]

Apply these words to the present case, and the conclusion is irresistible. Whatever legislation seems "appropriate" to "enforce" the abolition of Slavery, what-

[1] M'Culloch *v.* Bank of Maryland: 4 Wheaton, R, pp. 409, 421.
[2] Martin *v.* Hunter's Lessee: 1 Wheaton, R., 326.

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ever means seem proper to this end, must be within the powers of Congress under the Constitutional Amendment. You cannot deny this principle without setting aside those most remarkable judgments which stand as landmarks of constitutional history. But who can doubt that the abolition of the whole Black Code, in all its oligarchical pretensions, civil and political, is "appropriate" to "enforce" the abolition of Slavery? Mark the language of the grant. Congress may "enforce" abolition, and nobody can question the "means" it thinks best to employ. Let it not hesitate to adopt the "means" that promise to be most effective. As the occasion is extraordinary, so the "means" employed must be extraordinary.

But the Senate has already by solemn vote affirmed this very jurisdiction. You have, Sir, decreed that blacks shall enjoy the same civil rights as whites, — in other words, that with regard to civil rights there shall be no oligarchy, aristocracy, caste, or monopoly, but that all shall be equal before the law, without distinction of color. And this great decree you have made, as "appropriate legislation" under the Constitutional Amendment, to "enforce" the abolition of Slavery. Surely you have not erred. Beyond all question, the protection of the colored race in civil rights is essential to complete the abolition of Slavery; but the protection of the colored race in political rights is not less essential, and the power is as ample in one case as in the other. In each you legislate for the maintenance of that Liberty so tardily accorded, and the legislation is just as "appropriate" in one case as in the other. Protection in civil rights by Act of Congress will be a great event. It will be great in itself. It will be greater still, because

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it establishes the power of Congress, without further amendment of the National Constitution, to protect every citizen in all his rights, including of course the elective franchise. There are precedents of Congress, as well as of courts, which are landmarks; and this is one of them.

Therefore, as authority for Congress, you have two sources in the Constitution itself, — first, the guaranty clause, and, secondly, the Constitutional Amendment, each sufficient, the two together a twofold sufficiency, To establish the Equal Rights of All, no further Amendment is needed. The actual text is exuberant. Instead of adding new words, it will be enough, if you give those that exist the natural force belonging to them. Instead of neglecting, use them. Instead of supplementing, interpret them. An illustrious magistrate once retorted upon an advocate, who, dissatisfied with a ruling of the court, threatened to burn his books, "Better read them"; and so would I say now to all who think the Constitution needs amendment, Better read it. Yes, Sir, read it in the principles proclaimed by the Fathers before the Revolution, read it in the declarations of the Fathers when they took their place as a Republic, read it in the avowed opinions of the Fathers, read it in the public acts of the Fathers; and in all this beaming, diffusive light you will discern the true meaning. Then again read it in that other light which, as from another sun, newly risen at midday, streams from the obligation of Congress to "enforce" the abolition of Slavery. And yet again read it in the glowing illumination of the war. In whichever light you read it, you will find always the same irresistible meaning. Even if the text were doubtful, the war makes it clear. The victory which

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overthrew Slavery carried away all those glosses and constructions by which this wrong was originally fastened upon it. For generations the National Constitution has been interpreted for Slavery. From this time forward it must be interpreted in harmony with the Declaration of Independence, so that Human Rights shall always prevail. The promises of the Fathers must be sacredly fulfilled. This is the commanding rule, superseding all other rules. This is a great victory of the war, — perhaps the greatest. It is nothing less than the emancipation of the Constitution itself.

V.

MR. PRESIDENT, such is the testimony of history, authority, and Constitution, binding the judgment, and leaving no alternative. Thus far I have done little but bring together the diversified testimony and weave it into one body. It is not I who speak. I am nothing. It is the cause, whose voice I am, that addresses you. But there are yet other things, even at this late hour, craving utterance. And here, after this long review, I am brought back to more general considerations, and end as I began, by showing the necessity of Enfranchisement for the sake of public security and public faith. I plead now for the ballot, as the great guaranty, and *the only sufficient guaranty*, — being in itself peacemaker, reconciler, schoolmaster, and protector, — to which we are bound by every necessity and every reason; and I speak also for the good of the States lately in rebellion, as well as for the glory and safety of the Republic, that it may be an example to mankind.

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Let me be understood. What I ask especially is impartial suffrage, which is, of course, embraced in universal suffrage. What is universal is necessarily impartial. For the present, I simply insist that all shall be equal before the law, so that in the enjoyment of this right there shall be no restriction not equally applicable to all. Any further question in the nature of "qualification" belongs to another stage of the debate. And yet I have no hesitation in saying that universal suffrage is a universal right, subject only to such regulations as the safety of society may require. These may concern (1.) age, (2.) character, (3.) registration, (4.) residence. In ancient Greece there was what is called a Timocracy, where a certain amount of property was required; and this condition has modern example, even among us. But it is entirely out of place now. Nobody doubts that minors may be excluded, and so also persons of infamous life. Registration and residence are both prudential requirements for the safeguard of the ballot-box against the Nomads and Bohemians of politics, and to compel the exercise of this franchise among neighbors and friends, where a person is known. Education also, under certain circumstances, may be a requirement of prudence, particularly valuable in a republic, where so much depends on the intelligence of the people; but it is of doubtful value, especially where patriotic votes are needed to crush treason or counteract fraud. There is something worse than inability to read and write. These temporary restrictions do not in any way interfere with the right of suffrage, for they leave it *absolutely accessible to all*. Even if impediments, they are easily overcome. At all events, they are not in any sense insurmountable; and this is the essential requirement

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of republican institutions. No matter under what depression of poverty, in what depth of obscurity, or with what diversity of complexion a man has been born, he is nevertheless a citizen, the peer of every other citizen, and the ballot is his inalienable right.

The ballot is *peacemaker;* and is it not said, "Blessed are the peacemakers"? High among the Beatitudes let it be placed, for there it belongs. Deny it, and the freedman will be the victim of perpetual warfare. Ceasing to be a slave, he only becomes a sacrifice. Grant it, and he is admitted to those equal rights which allow no sacrifice. Plutarch records that the wise man of Athens charmed the people by saying that *Equality causes no War*, and this "pleased both the rich and the poor."[1] In another place the same ancient records the wise man as declaring it "that which would occasion no tumult or faction."[2] But this is peace. How godlike in transforming power alike on master and slave! The master will recognize the new citizen. The slave will stand with tranquil self-respect in presence of the master. Brute force disappears. Distrust is at an end. The master is no longer tyrant. The freedman is no longer dependant. The ballot comes to him in his depression, and says, "Use me, and be elevated." It comes to him in his passion, and says, "Use me, and do not fight." It comes to him in his daily thoughts, filling him with the strength and glory of manhood.

The ballot is *reconciler*. Next after peace is reconciliation. But reconciliation is more than peace. It

[1] Lives, tr. Langhorne: Solon, c. 14.
[2] Morals, ed. Goodwin: Of Brotherly Love, c. 12.

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is concord. Parties long estranged are brought into harmony. They learn to live together. They learn to work together. They are kind to each other, even if only as the Arab and his horse; and this mutual kindness is mutual advantage. Unquestionably the ballot promises this great boon, because it brings all into natural relations of justice, without which reconciliation is a vain thing. Do you wish to see harmony truly prevail, so that industry, society, government, civilization may all prosper, and the Republic wear a crown of true greatness? Then do not neglect the ballot.

The ballot is *schoolmaster*. Reading and writing are of inestimable value, but the ballot teaches what these cannot teach. It teaches manhood. Especially is it important to a race whose manhood has been denied. The work of redemption cannot be complete, if the ballot is left in doubt. The freedman already knows his friend by the unerring instinct of the heart. Give him the ballot, and he will be educated into the principles of government. Deny him the ballot, and he will continue alien in knowledge as in rights. His claim is exceptional, as your injustice is exceptional. For generations you have shut him out from all education, making it a crime to teach him to read the Book of Life. Let not the tyranny of the past be apology for further exclusion. Prisoners long immured in a dungeon are sometimes blinded, as they come forth into day; but this is no reason for continued imprisonment. To every freedman the ballot is the light of day.

The ballot is *protector*. Perhaps, at the present moment, this is its highest function. Slavery has ceased

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in name; but this is all. The old master still asserts an inhuman power, and now by positive statutes seeks to bind his victim in new chains. Let this conspiracy proceed unchecked, and the freedman will be more unhappy than the early Puritan, who, seeking liberty of conscience, escaped from the "lords bishops" only to fall under the "lords elders." The master will still be master, under another name, — as, according to Milton,

"New presbyter is but old priest writ large."

Serfdom or apprenticeship is slavery in another guise. To save the freedman from this tyranny, with all its accumulated outrage, is a solemn duty. For this we are now devising guaranties; but, believe me, the only sufficient guaranty is the ballot. Let the freedman vote, and he will have in himself under the law a constant, ever-present, self-protecting power. The armor of citizenship will be his best security. The ballot will be to him sword and buckler, — sword with which to pierce his enemies, and buckler on which to receive their assault. Its possession will be a terror and a defence. The law, which is the highest reason, boasts that every man's house is his castle; but the freedman can have no castle without the ballot. When the master knows that he may be voted down, he will know that he must be just, and everything is contained in justice. The ballot is like charity, which never faileth, and without which man is only as sounding brass or a tinkling cymbal. The ballot is the one thing needful, wanting which, rights of testimony and all other rights are no better than cobwebs, which the master will break through with impunity. To him who has the ballot all other things shall be given, — protection, opportunity, education, a homestead. The ballot is the Horn of Abun-

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dance, out of which overflow rights of every kind, with corn, cotton, rice, and all the fruits of the earth. Or, better still, it is like the hand of the body, without which, man, who is now only a little lower than the angels, must have continued only a little above the brutes. We are fearfully and wonderfully made; but as is the hand in the work of civilization, so is the ballot in the work of government. "Give me the ballot and I will move the world" may be the exclamation of the race despoiled of this right. There is nothing it cannot open with almost fabulous power, like that golden bough which in the hands of the classical adventurer unclosed the regions of another world, while, like that magic rod, it is renewed as in the verse, —

> "One plucked away, a second branch you see
> Shoot forth in gold and glitter through the tree." [1]

If I crowd these illustrations, it is only that I may bring home that supreme efficacy which cannot be exaggerated. Though simple in character, there is nothing the ballot may not accomplish, — like the homely household lamp in Arabian story, which, at call of its possessor, evoked a spirit that did all things, from the building of a palace to the rocking of a cradle, and filled the air with an invisible presence. As protector it is of immeasurable power, — like a fifteen-inch Columbiad pointed from a Monitor. Ay, Sir, the ballot is the Columbiad of our political life, and every citizen who has it is a full-armed Monitor.

Having pleaded for the freedman, I now plead for the Republic; for to each alike the ballot is a *necessity*. It is idle to expect any true peace while the freedman is

[1] Virgil, Æneid, tr. Pitt, Book VI., 204, 205 [143, 144].

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robbed of this transcendent right, and left a prey to a vengeance too ready to wreak upon him the disappointment of defeat. The country, sympathetic with him, will be in perpetual unrest. With him it will suffer; with him alone can it cease to suffer. Only through him can you redress the balance of our political system and assure the safety of patriot citizens. Only through him can you save the national debt from the inevitable repudiation awaiting it, when recent Rebels in conjunction with Northern allies once more bear sway. He is our best guaranty. Use him. He was once your fellow-soldier; he has always been your fellow-man. If he was willing to die for the Republic, he is surely good enough to vote. And now that he is ready to uphold the Republic, it is madness to reject him. Had he voted originally, the Acts of Secession must have failed, treason would have been voted down. You owe this tragical war, and the debt now fastened upon the country, to the denial of this right. Vacant chairs in once happy homes, innumerable graves, saddened hearts, mothers, fathers, wives, sisters, brothers, all mourning lost ones, the poor ground by taxation never known before, all testify against the injustice by which the present freedman was not allowed to vote. Had he voted, there would have been peace. If he votes now, there will be peace. Without this you must have a standing army, which is a sorry substitute for justice. Before you is the plain alternative of the ballot-box or the cartridge-box: choose ye between them.

Reason, too, in every way and with every voice, cries out in unison with necessity. All policies, all expediencies, all economies take up the cry. Nothing so im-

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politic as wrong; nothing so inexpedient as tyranny; nothing so little economical as the spirit of caste. Justice is the highest policy, the truest expediency, and the most comprehensive economy. In this inspiration act. Do you wish to save the national credit, still imperilled by fatal injustice, and to secure gold as the national currency? Then do not let the question of Equal Rights disturb the country with volcanic throes. You complain that labor is unorganized, and that the cotton crop fails. Do you wish labor to smile and cotton to grow? Then sow the land with Human Rights, and encircle it round about with Justice. The freedman will not, cannot work, while you deny his rights. Cotton will not, cannot grow in such an atmosphere. Absurd to expect it. Using the freedman as you now do, you imitate those barbarous Irish who insisted upon ploughing by the horse's tail, until an Act of Parliament interfered to require ploughing by harness. The infinite folly must be corrected, if for no higher reason than because it is unprofitable. But it is contrary to Nature, and on this account renders the whole social system insecure. Where Human Rights are set at nought, there can be no tranquillity except that of force, which is despotism. The philosophy of history, speaking by one of its oracles, the great Italian Vico, confirms this lesson, when it says, most sententiously, that "nothing out of its natural state can either easily subsist or last long." Truer words were never uttered, as statement of philosophy, or warning to injustice enacted into law.

Gratitude, in unison with necessity and reason, takes up the cry, insisting that we shall not fail in duty to benefactors. It is difficult to measure the extent of this

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obligation, which is vast in proportion to regard for Human Rights and the value set upon the Union. By their strong arms and patriot example the national strength was aggrandized. As Freedom stamped her foot, black armies sprang from the ground. To save the Republic they toiled, digging trenches and making of their bodies breastworks; for the Republic they bled. Toiling and fighting, they became copartners in the government. And shall we now disown the copartnership? Receiving them into our embattled lines, the Republic is estopped against all denial of their Equal Rights. Acts stronger than words created the unimpeachable estoppel. They aided the victories by which the Republic was assured in unity. Is there no assurance for them also?

If that "more perfect union" proclaimed in the National Constitution as a primary object has been obtained at last, it is through them. If the terrible crime of Slavery, for which the Republic suffered in strength and good name, is ended, and the Republic thereby exalted, it is through them. They helped our deliverance. To them, therefore, are we bound as debtor to creditor, as just man to benefactor. By their undoubted service we are under perpetual obligation of doing to them as they did to us. We must deliver them. Here justice commands; but another sentiment, proceeding from the heart, lends persuasive influence. Failing in present duty, the Republic will lose a precious possession, as full of sweetness as of strength.

"Sweet is the breath of vernal shower,
The bee's collected treasures sweet,
Sweet music's melting fall; but sweeter yet
The still, small voice of Gratitude."[1]

[1] Gray, Ode for Music, st. v.

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Mr. President, already I have taken too much time, and still the great theme, in various and multitudinous relations, continues to open before us. At each step it rises in some new aspect, assuming every shape of interest and of duty,—now with voice of command, and then with voice of persuasion. The national security, the national faith, the good of the freedman, the concerns of business, agriculture, justice, peace, reconciliation, obedience to God, — these are among the forms it takes. In the name of all these I speak to-day, hoping to do something for my country, and especially for that unhappy portion which has been arrayed in arms against us. The people there are my fellow-citizens, and gladly would I hail them, if they would permit, as no longer a "section," no longer "the South," but an integral part of the Republic, under a Constitution which, knowing no North and no South, cannot tolerate "sectional" pretension. Gladly, in all sincerity, do I offer my best effort for their welfare. But I see clearly that there is nothing in the compass of mortal power so important to them in every respect, morally, politically, and economically, that there is nothing with such certain promise to them of beneficent result, that there is nothing so sure to make their land smile with industry and fertility, as the decree of Equal Rights I now invoke. Let the judgment go forth to cover them with blessings, sure to descend upon their children in successive generations. They have given us war: we offer them peace. They have raged against us in the name of Slavery: we send them back the benediction of justice for all. They menace hate: we ask them to accept in return all the sacred charities of country, together with oblivion of the past. This is our

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"Measure for Measure." This is our retaliation. This is our only revenge.

All omens are with the Republic, destined yet to win its sublimest triumphs. Timid or perverse counsels may postpone the gladsome consummation; but the contest now begun can end only when Slavery is completely transformed by a metamorphosis which shall substitute justice for injustice, riches for poverty, and beauty for deformity. From history we learn not only the past, but the future. By the study of what has been we know what must be, according to unerring law. Call it, if you please, the logic of events, and infer the inevitable conclusion. Or call it, if you please, the Rule of Three, and from the result of certain forces determine the proportionate result of increased forces. There can be no mistake in the answer. And so it is plain that the Equal Rights of All will be established. Amid all seeming vicissitudes the work proceeds. Soon or late the final victory will be won,— I believe soon. Speeches cannot stop it; crafty machinations cannot change it. Against its irresistible movement politicians are as impotent as those old conjurers who imagined that

> "By rhymes they could pull down full soon
> From lofty sky the wandering moon." [1]

These verses, which shine on the black-letter page of the great lawyer, Sir Edward Coke, aptly describe the incantations of our day to pull down Justice from her lofty sky. It cannot be done. In this conviction I observe what comes to pass without losing faith. I listen with composure to arguments which ought not to be made, and I see with equal composure how individual opinions swing between Congress and the Presi-

[1] Coke, Institutes, Third Part, p. 44.

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dent. It is not to the oscillations of the pendulum that we look for the measure of time, but to the face of the public clock and the striking of the church bell. The indications of that clock and the striking of that bell leave little room for doubt.

In the fearful tragedy drawing to a close there is a destiny, stern and irresistible as that of the Greek drama, which seems to master all that is done, hurrying on the death of Slavery and its whole brood of sin. There is also a Christian Providence which watches this battle for right, caring especially for the poor and down-trodden who have no helper. The freedman, still writhing under cruel oppression, lifts his voice to God the Avenger. It is for us to save ourselves from righteous judgment. Never with impunity can you outrage human nature. Our country, which is guilty still, is paying still the grievous penalty. Therefore by every motive of self-preservation we are summoned to be just. And thus is the cause associated indissolubly with the national life.

But, saving the Republic, we elevate it. Overthrowing an oppressive injustice, we give full scope to the principles of the National Government, and fulfil the "idea of a perfect commonwealth" which has charmed the visions of philosophy and poetry. "I am all that has been, that is, and that shall be, and none among mortals has hitherto lifted my veil": such was the enigma cut on the pavement of the Temple of the Egyptian Minerva.[1] For ages it remained unanswered; but the answer is at hand. The Republic is all that has been, that is, and that shall be; and it is your duty to lift the veil. To do less were failure; for such was the aspi-

[1] Plutarch, Of Isis and Osiris, Ch. IX.

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ration and promise of the Fathers, assuming their first vows in the family of nations. To do this will fix the example of American institutions. So long as Slavery endured, it was impossible; so long as the Black Code, wretched counterpart of Slavery, endures in any form, it is impossible. To attain this idea we must proclaim the rule of justice. Slavery thus far has been the very pivot round which the Republic revolved, while all its policy at home and abroad has radiated from this terrible centre. Hereafter the Equal Rights of All will take the place of Slavery, and the Republic will revolve on this glorious centre, whose countless, far-reaching radiations will be the happiness of the people. There is nothing the imagination can picture which will not be ours. Where justice is supreme, nothing can be wanting. There will be room for every business and for every charity. The fields will nod with increase, industry will be quickened to unimagined triumph, and life itself raised to higher service. There will be that repose which comes from harmony, and also that simplicity which comes from one prevailing law, both essential to the idea of Republic. Our country will cease to be a patchwork where different States vary in the rights they accord, and will become a Plural Unit, with one Constitution, one liberty, and one franchise. With all these things the Republic will be the synonym for justice and peace, since these things will be inseparable from its name. In our longings we need not repair to philosophy or poetry. Nor need we go back to the memorable sage who declared that the best government was where every citizen rushed to the defence of the humblest as if he were the state, for all this will be ours. Nor need we go back to the patriot king, in

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ancient tragedy, who, inspired by the republican idea, called for the vote of the people: —

> "For them I made supreme,
> And on this city, *with an equal right*
> *For all to vote*, its freedom have bestowed." [1]

Here, at last, among us all this will be assured, and the Republic will be of such renown and virtue that all at home or abroad who bear the American name may exclaim with more than Roman pride, "I am an American citizen!" — and if danger approaches, they may repeat the same cry with more than Roman confidence, knowing well that this title will be a sufficient protection. Then will be renewed the story of the two sticks in the prophecy of Ezekiel: "Behold, I will take the stick of Joseph, which is in the hand of Ephraim, and the tribes of Israel his fellows, and will put them with him, even with the stick of Judah, and make them one stick, and they shall be one in mine hand." [2]

Sir, it is for you now to determine if all this shall be fulfilled. The whole case is before you in its grandeur and its humanity, infinite as human aspiration, beautiful as the vision of a republic. Turn not away from it. Vindicate the great cause, I entreat you, by the suppression of all oligarchical pretensions, and the establishment of those equal rights without which republican government is a name, and nothing more.

[1] Euripides, The Suppliants: Tragedies, tr. Wodhull, Vol. II. p. 20. — Milton, in his Answer to Salmasius, has used this text; and in the English repetition of that tract he has turned it into prose: "I have advanced the people themselves into the throne, having freed the city from slavery, and admitted the people to a share in the government, *by giving them an equal right of suffrage.*" — *Defence of the People of England, in Answer to Salmasius*, Ch. VI: Works (London, 1851), Vol. VIII. p. 163.

[2] Ezekiel, xxxvii. 19.

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Strike at the Black Code, as you have already struck at the Slave Code. There is little to choose between them. Strike at once; strike hard. You have already proclaimed Emancipation; proclaim Enfranchisement also. Nor longer stultify yourselves by setting at nought the practical principle of the Fathers, that all just government stands only on the consent of the governed, and its inseparable corollary, that *taxation without representation is tyranny.* What was once true is true forever, although we may for a time lose sight of it; and this is the case with those imperishable truths to which you have been, alas! so indifferent. Thus far the work is only *half done.* See that it is finished. Save the freedman from the outrage which is his daily life. As a slave he was "a tool without a soul." If you have ceased to treat him according to this ancient definition, it is only because you treat him even as something less. In your cruel arithmetic he is only a "cipher," without the protection which the slave sometimes found in the self-interest of the master; or rather let me say he is only a "cipher" where rights are concerned, but a numeral counted by millions where taxes are to be paid. Not only is the freedman compelled to pay, he must fight also, and he must obey the laws, — three things he cannot escape. But, according to the primal principle of republican government, he has an indefeasible right to a voice in determining how to be taxed, when to fight, and what laws to obey, — all of which can be secured only through the ballot. Thus again do I bring you to the same conclusion, confronting us at every point and at every stage, as a commandment not to be disobeyed.

Would you secure all the just fruits of this terrible

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war, and trample out the Rebellion in its pernicious assumptions, as in its arms? You cannot hesitate; and this is the last stage of the argument. The Rebellion began in two assumptions, both proceeding from South Carolina: first, the sovereignty of the States, with the pretended right of secession; and, secondly, the superiority of the white race, with the pretended right of caste, oligarchy, and monopoly, on account of color. The first was often announced in many ways. The second showed itself at the beginning, when South Carolina, conspicuous among the Thirteen States, allowed her Constitution to be degraded by an exclusion on account of color; but it did not receive authoritative statement until a later day, when that false evangelist, Mr. Calhoun, taking issue with the Declaration of Independence, audaciously announced in the Senate that to declare all born free and equal was "the most dangerous of all political errors"; that it had "done more to retard the cause of liberty and civilization, and is doing more at present, than all other causes combined"; and that "we now begin to experience the danger of admitting so great an error to have a place in the Declaration of our Independence."[1] These two assumptions are kindred in effrontery. All agree that the dogma of State sovereignty must be repelled; but this is less offensive than the other, having the same origin, that the Declaration of Independence is "the most dangerous of all political errors." To repel such effrontery is not enough; it must be scorned.

The Gospel according to Calhoun is only another statement of the imposture, that this august Republic,

[1] Speech on the Bill to establish a Territorial Government in Oregon, June 27, 1848: Works, Vol. IV. pp. 511, 512.

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founded to sustain the rights of Human Nature, is nothing but "a white man's government." The whole assumption is ignoble, utterly unsupported by history, and insulting to the Fathers, while offensively illogical and irreligious. It is illogical, inasmuch as our fathers, when they declared that all men are created equal, gave expression to a truth of political science, which, from the nature of the case, admits no exception. As axiom it is without exception; for it is the essence of an axiom, whether in geometry or morals, to be universal. As abstract truth it is also without exception, according to the requirement of such truth. And, finally, as self-evident truth, so announced in the great Declaration, it is without exception; for only such truth can be self-evident. Thus, whether axiom, abstract truth, or self-evident truth, it is always universal. But the assumption is not only illogical, it is irreligious, inasmuch as it flies in the face of that living truth which appears twice at the Creation: first, when God said, "Let us make man in our image"; and, secondly, in the unity of the race, then divinely appointed, and which appears again in the Gospel, when it said, "God, that made the world, and all things therein, hath made of one blood all nations of men." According to the best testimony, the present population of the earth — embracing Caucasians, Mongolians, Malays, Africans, and Americans — is about thirteen hundred millions, of whom only three hundred and seventy-five millions are "white," or little more than one fourth; so that, in claiming exclusive rights for "white," you degrade nearly three quarters of the human family, made in the "image of God" and declared to be of "one blood," while you sanction a caste offensive to religion, an oligarchy inconsistent with re-

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publican government, and a monopoly which has the Human Family as the subject of its tyrannical usurpation.

Against this assumption I protest with mind, soul, and heart. It is false in religion, false in statesmanship, and false in economy. It is an extravagance, which, if enforced, is foolish tyranny. Show me a creature, with lifted countenance looking to heaven, made in the image of God, and I show you A MAN, who, of whatever country or race, whether browned by equatorial sun or blanched by northern cold, is with you a child of the Heavenly Father, and equal with you in all the rights of Human Nature. You cannot deny these rights without impiety. And so, as God linked the national welfare with national duty, you cannot deny these rights without peril to the Republic. It is not enough that you have given Liberty. By the same title that we claim Liberty do we claim Equality also. One cannot be denied without the other. What is Equality without Liberty? What is Liberty without Equality? One is the complement of the other. The two are necessary to begin and complete the circle of American citizenship. They are the inseparable organs through which the people have their national life. They are the two vital principles of republican government, without which, government, although republican in name, cannot be republican in fact. These two vital principles belong to those divine statutes graven on the soul of Universal Man, even of the slave who forgets them, and of the master who denies them, and, whether forgotten or denied, more enduring than marble or brass, for they share the perpetuity of the human family.

The Roman Cato, after declaring his belief in the im-

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mortality of the soul, added, that, if this were an error, it was an error he loved. And now, declaring my belief in Liberty and Equality as the God-given birthright of all men, let me say, in the same spirit, if this be an error, it is an error I love, — if this be a fault, it is a fault I shall be slow to renounce, — if this be an illusion, it is an illusion which I pray may wrap the world in its angelic forms.

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APPENDIX.

THE sequel of this speech, which occupied two days in the delivery, will appear, *first*, in the Debate and Votes that ensued, and, *secondly*, in its reception by the country, as illustrated by the Press and Correspondence.

DEBATE AND VOTES.

THE speech of Mr. Sumner was followed by a succession of speeches extending over a month, with considerable variation by a concurrent resolution from the House of Representatives involving the same questions.

Mr. Fessenden, of Maine, on the day after Mr. Sumner, spoke at length. In the course of his remarks he said: —

"I take it no one contends, I think the honorable Senator from Massachusetts himself, who is the great champion of Universal Suffrage, would hardly contend, that now, at this time, the whole mass of the population of the recent Slave States is fit to be admitted to the exercise of the right of suffrage."

Then again: —

"While the honorable Senator from Massachusetts argued, and argued with great force, that every man should have that right, and that he should only be subject to disabilities which he could overcome, his argument, connected with the other principle that he laid down, and the application of it that he made, that taxation and representation should go together, would just as well apply to women as to men; but I noticed that the honorable Senator dodged that part of the proposition very carefully."

He criticized the substitute offered by Mr. Sumner, when the latter remarked: —

"Last Friday this Senate solemnly declared, that, under the Constitutional Amendment abolishing Slavery, it had power to decree the equal rights of all persons everywhere throughout the United States, without distinction of color. The moment that was declared, I said to friends about

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me that the duty of Congress was fixed with regard to political rights also. If Congress can decree equality in civil rights, by the same reason, if not *a fortiori*, it can decree equality in political rights; and as the preamble to my proposition recited two reasons or moving causes, one the guaranty clause, and the other the Constitutional Amendment, I felt it my duty, acting upon the vote of the Senate, to insist that the declaration of equality for all should be coextensive with the Republic, claiming as I do under the guaranty clause that it operates within all the States where there has been a lapse of government, and that under the Constitutional Amendment it operates everywhere within the limits of the Republic."

In confining the guaranty clause to States that had "lapsed," Mr. Sumner was cautious not to make his proposition too broad, although his judgment was that it was applicable to all the States, and authorized a prohibition by Congress of unrepublican provisions in any State.

Mr. Fessenden said: "The Senator says we may secure it in the States which have lapsed. That is a new phrase, but perhaps it is as good as any other." But he was unwilling to accept this power.

Mr. Lane, of Indiana, said, in answer to Mr. Sumner: —

"If Congress had the undoubted and unquestionable authority to pass such a law, it gets at the result more readily than does the Constitutional Amendment; but it is doubtful to my mind whether Congress has this power. I believe, under the Constitution, the right to determine the qualifications of electors is left with the several States."

Then of the counter proposition he said: —

"It is a noble declaration, but a simple declaration, — a paper bullet, that kills no one, and fixes and maintains the rights of no one."

Mr. Johnson, of Maryland, Mr. Henderson, of Missouri, Mr. Clark, of New Hampshire, Mr. Williams, of Oregon, Mr. Hendricks, of Indiana, Mr. Yates, of Illinois, Mr. Buckalew, of Pennsylvania, Mr. Pomeroy, of Kansas, Mr. Saulsbury, of Delaware, Mr. Morrill, of Maine, and Mr. Wilson, of Massachusetts, all spoke at length. Of these, Mr. Henderson, Mr. Yates, and Mr. Pomeroy sustained Mr. Sumner, in opposition to the House expedient, although the first preferred to assure suffrage by a Constitutional Amendment ordaining it: while insisting upon the ballot for the colored citizen, he doubted the power of Congress. Mr. Johnson thought the claim of our fathers, in their cry against Taxation without Representation, was for communities, and not for individuals. Mr. Sumner afterwards replied at length to this opinion.[1] In the course of Mr. Henderson's speech, occupying two days, the following colloquy occurred.

[1] *Post*, pp. 294, seqq.

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MR. SUMNER. Do I understand my friend as insisting that the denial of the franchise is consistent with a republican government? Take the State of South Carolina, which denies the franchise to more than half its population.

MR. HENDERSON. In theory it is not. Under the Constitution it was regarded as a republican State at the time of the adoption of the instrument.

MR. SUMNER. It did not deny the franchise to half its citizens and more. I say citizens. Most excluded were slaves.

MR. HENDERSON. It then had only one hundred and forty thousand whites, and had one hundred and seven thousand slaves. It also had eighteen hundred free negroes. I think it more nearly a republican State now than then. Practically, the question of suffrage was left to the States ——

MR. SUMNER. But that is the question, whether they were left to deny suffrage to any freeman on account of color.

MR. HENDERSON. If that be the question, then the point is against my friend; for both South Carolina and Virginia did deny the suffrage to the free negroes on account of color only, at the time when the Constitution was made, and when it was adopted. Virginia had upward of twelve thousand free negroes thus denied.

MR. SUMNER. But the question is — I cannot anticipate my friend's conclusion on that point ——

MR. HENDERSON. My conclusion is, that a mistake was made in recognizing a Constitution as republican that permitted Slavery. I know of no way to get rid of it except by Constitutional Amendment. I think another mistake was committed in leaving each State to so far abridge the right of suffrage as to change, in theory, the republican form. But such is the Constitution, and you cannot change it by Act of Congress. That is my conclusion.

MR. SUMNER. You are wrong. It is a question of theory with regard to republican government, and I say that the Constitution must be interpreted according to this theory.

MR. HENDERSON. But our fathers did not deal with it in the Constitution as a question of theory, but as a question of fact. Whatever may have been their theories, I mean only to say that the text of the Constitution does not carry them out ——

MR. SUMNER. The practical point is, Did our fathers concede to any State the power of disfranchising citizens on account of color? I utterly deny it, and I challenge my friend to show any authority for it.

MR. HENDERSON. Why, Mr. President, if I have already failed to show it, I must fail in the future. I have shown that the suffrage was left to the States, and that they did exclude their negroes, — that they held in slavery in Virginia almost half of their population,[1] and that Virginia was called a republican State. Indeed, she was most prominent in making the very provisions we are discussing. She excluded the slaves and ——

[1] Less than two fifths. By census of 1790, whole population 748,308; slaves 293,427.

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MR. SUMNER. Ah! slaves. That is another thing. The question is, whether you are allowed to disfranchise freemen on account of color, — whether you are allowed to deny freemen rights as citizens. That I deny. The exception was slaves, who were not regarded as members of the "body politic." They were treated as minors, or as women, represented by their masters. But every freeman, no matter what his color, was recognized as entitled to all the privileges of citizenship; he was one of the sovereigns. The proposition cannot be met, if my friend will consult the history of his country.

MR. HENDERSON. It was not slaves only that were disfranchised, but I have shown that free negroes were also disfranchised. But I have no controversy with the Senator in what we mutually aim at.

MR. SUMNER. I know that, and I concede to my excellent friend all that I claim for myself. We are in search of the best. I applaud his zeal, and thank him for his courtesy.

MR. HENDERSON. I am certainly very much obliged to the Senator from Massachusetts. I feel now ten times better than I did before. [*Laughter.*] — I cannot longer detain the Senate in presenting objections to the exercise of legislative power under the guaranty clause. It is sufficient to control my own action, that I believe by the letter, and even spirit of the Constitution, the suffrage was placed exclusively under the control of State action. I think that the error of so placing it is as clear as the error made in tolerating Slavery. To rid ourselves of the evil, however, we must amend the Constitution.

MR. SUMNER. Do I understand my friend that a State might adopt a rule founded on the color of the hair, so that all men with light hair should be excluded from suffrage? I insist that a State is not authorized, under the Constitution, to make any exclusion on account of color.

MR. HENDERSON. It ought not to be, you mean.

MR. SUMNER. No, — it cannot be. Color cannot be a qualification. There may be a qualification founded on age, or residence, or knowledge, or crime.

MR. HENDERSON. You are now coming in conflict with the Committee of Fifteen, who declare by their resolution that the States now have the power, and may yet exclude everybody of a particular race or color.

MR. SUMNER. The Committee propose to place that in the Constitution, which is one reason why I object to their report. I say that they propose to do what our fathers never did.

MR. HENDERSON. The Senator from Massachusetts is in theory, perhaps, correct. He is speaking, however, of an ideal Constitution.

The following colloquy also occurred.

MR. HENDERSON. The Senator from Massachusetts proposes to do by an Act of Congress what I think can only be done by a Constitutional Amendment. That is the difference now between the Senator from Illinois [Mr. YATES] and myself. I think the Amendment can be adopted. Indeed, I feel confident of it.

MR. SUMNER. What Amendment?

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MR. HENDERSON. An Amendment to the Constitution preventing any discrimination against the negro in the right of suffrage because of color.

MR. SUMNER. It cannot.

MR. HENDERSON. I thought in the bright lexicon of the Senator from Massachusetts there was no such word as "fail."

MR. SUMNER. I thought the Senator meant that this proposition of the Reconstruction Committee could be adopted.

MR. HENDERSON. Oh, no! I never thought that.

MR. SUMNER. I believe that the Senator's proposition can be adopted — gratefully adopted — by the country; but the other cannot be.

Mr. Williams, of Oregon, hesitated with regard to Mr. Sumner's substitute, although he seemed to sympathize with the speech.

"Sir, I listened with profound admiration to the speech which the Senator delivered in favor of the proposed substitute. It was worthy of the subject, worthy of the occasion, worthy of the author; and when those who heard it shall be forgotten, the echoes of its lofty and majestic periods will linger and repeat themselves among the corridors of History. I cordially indorse the prevailing sentiment of that speech. I believe that the founders of this Republic intended that all freemen should participate in the political and civil rights of the country. I think the distinction which they made was not between white men and black men: that distinction is of modern origin: but the distinction which they made was between freemen and slaves."

He took objection to the substitute.

"Pass that law at this session, and it becomes an issue in the next political campaign; and those who sustain it and pass it here will be committed to its support, and those who oppose it will strive to elect men in favor of its repeal. A majority of this Congress may believe in the constitutionality and expediency of such legislation; but another Congress, if a majority should happen to sympathize with the honorable Senator from Kentucky, would abrogate the law, and so the political rights of millions of people would be as varying as the capricious fortunes of the political parties of the country."

In the intervening debate on the Reconstruction Resolution of the House of Representatives, Mr. Cowan, of Pennsylvania, made an elaborate speech on the pending Amendment, in which he pictured the compromise involved in it.

"This Committee proposes in this Amendment to sell out four million (radical count) negroes to the bad people of those States forever and ever. In consideration of what? I am asked. O shame, where is thy blush? I answer, in dust and ashes, For about sixteen members of Congress. Has there ever been before, Sir, in the history of this or any other country, such a stupendous sale of negroes as that? Never! never! It is saying to the

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Southern States, You may have these millions of human beings, whom we love so dearly, and about whom we have said so much, and for whom we have done so much, — you may do with them as you please in the way of legislative discrimination against them, if you will only agree not to count them at the next census, except as your sheep and oxen are counted; waive your right to sixteen members of Congress, and the great compromise is sealed, the long agony is over, the nation's dead are avenged, the nation's tears are dried, and the nation's politics are relieved of the negro."

March 7th, Mr. Sumner spoke at length in reply to Mr. Fessenden and others who had opposed his substitute. This speech appears in the present volume, according to its date.[1] He was followed by his colleague, Mr. Wilson, who was strenuous for the House Amendment.

"Mr. President, there are indications, not to be mistaken, that this Amendment is doomed to defeat. To me this result will be a subject of sincere and profound regret. My heart, my conscience, and my judgment approve of this Amendment, and I support it without qualification or reservation."

March 9th, Mr. Fessenden spoke again, criticizing especially Mr. Yates and Mr. Sumner.

Mr. Sumner followed Mr. Fessenden in a brief reply, which will be found under its date.[2]

Mr. Wilson declared again his adhesion to the pending Amendment, saying: "I would go to the scaffold joyfully before the sun goes down, if I could put this proposed Amendment into the Constitution of my country; for, if it were there, there would be but one result and one end to it, and that is the enfranchisement of every black man within the bounds of the United States."

The voting then commenced on the various substitutes for the Amendment adopted by the House of Representatives.

First came the counter proposition of Mr. Sumner, altered, in conformity with the original draught,[3] so as to be applicable only to States that had lapsed, being "lately declared to be in rebellion," without republican government.

Mr. Henderson moved to strike out all of the counter proposition, and in lieu of it insert a Constitutional Amendment securing the suffrage to colored citizens: —

"ARTICLE 14. No State, in prescribing the qualifications requisite for electors therein, shall discriminate against any person on account of color or race."

[1] *Post*, p. 282. [2] *Post*, p. 888. [3] *Ante*, p. 114.

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Mr. Henderson felt obliged to move his amendment as a substitute for the counter proposition of Mr. Sumner in order to compel a vote upon it.

Mr. Sumner stated that he was for this proposition, and that he should vote for it, and, on its failure, press his own.

The question, being taken by yeas and nays on Mr. Henderson's amendment, resulted — Yeas 10, Nays 37 — as follows: —

YEAS, — Messrs. Brown, Chandler, Clark, Henderson, Howe, Pomeroy, Sumner, Wade, Wilson, and Yates.

NAYS, — Messrs. Anthony, Buckalew, Conness, Cowan, Cragin, Creswell, Davis, Dixon, Doolittle, Fessenden, Foster, Grimes, Guthrie, Harris, Hendricks, Johnson, Kirkwood, Lane of Indiana, Lane of Kansas, McDougall, Morgan, Morrill, Nesmith, Norton, Nye, Poland, Ramsey, Riddle, Saulsbury, Sherman, Sprague, Stewart, Stockton, Trumbull, Van Winkle, Willey, and Williams.

ABSENT, — Messrs. Foot, Howard, and Wright.

So the amendment to the amendment was rejected.

The question then recurred on the substitute of Mr. Sumner, when the vote stood, — Yeas 8, Nays 39; so it was rejected. Those voting in the affirmative were Messrs. Gratz Brown, of Missouri, Chandler, of Michigan, Howe, of Wisconsin, Pomeroy, of Kansas, Sumner, Wade, of Ohio, Wilson, of Massachusetts, and Yates, of Illinois.

Mr. Clark, of New Hampshire, then moved to amend the House proposition by striking out the proviso and inserting these words, being an amplification of the proviso: —

"Whenever the elective franchise shall be denied or abridged in any State in the election of Representatives to Congress, or of any other officer, municipal, State, or national, on account of race, color, descent, or previous condition of servitude, or by any provision of law not equally applicable to all races and descents, all persons of such race, color, descent, and condition shall be excluded from the basis of representation, as prescribed in the second section of the first article of the Constitution."

This amendment was adopted, — Yeas 26, Nays 20. It was afterwards withdrawn by the mover, with the unanimous consent of the Senate.

The next question was on a legislative substitute, not unlike that of Mr. Sumner, moved by Mr. Yates: —

"That no State or Territory of the United States shall, by any constitution, law, or other regulation whatever, heretofore in force or hereafter to be adopted, make, or enforce, or in any manner recognize, any distinction between citizens of the United States, or of any State or Territory, on account of race or color or previous condition of slavery; and that hereafter

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all citizens, without distinction of race, color, or previous condition of slavery, shall be protected in the full and equal enjoyment and exercise of all their civil and political rights, including the right of suffrage."

This was rejected, — Yeas 7, Nays 38.

Mr. Davis, of Kentucky, then moved to amend the proposition of the House of Representatives by inserting after the word "legislatures" the words "next hereafter to be chosen in each State." The motion was rejected, — Yeas 12, Nays 31.

Mr. Sumner then moved to strike out the proviso in the House proposition, as amended on the motion of Mr. Clark, and in lieu thereof insert, —

"And the elective franchise shall not be denied or abridged in any State on account of race or color."

In moving this Constitutional Amendment, Mr. Sumner remarked that it was "a direct, positive proposition, slightly different from that [Mr. HENDERSON's] on which the Senate had voted." It was rejected, — Yeas 8, Nays 38.

Mr. Sumner then moved to add at the end of the House proposition the words, "And they shall be exempt from taxation of all kinds."

Before the vote he remarked: —

"It is proposed, by a solemn provision of the Constitution, to declare that certain persons shall not be included in the basis of representation. I think, in justice to them, they should not be taxed. You ought not to repeat in the Constitution the tyranny of taxation without representation. In so many words, you are about to despoil fellow-citizens of representation, and I say, that, not to be inconsistent with your own institutions and with the principles upon which your government is founded, you must exempt them from taxation."

The amendment was rejected.

The question then came on the passage of the House proposition, when the vote stood, —

YEAS, — Messrs. Anthony, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Foster, Grimes, Harris, Howe, Kirkwood, Lane of Indiana, McDougall, Morgan, Morrill, Nye, Poland, Ramsey, Sherman, Sprague, Trumbull, Wade, Williams, and Wilson.

NAYS, — Messrs. Brown, Buckalew, Cowan, Davis, Dixon, Doolittle, Guthrie, Henderson, Hendricks, Johnson, Lane of Kansas, Nesmith, Norton, Pomeroy, Riddle, Saulsbury, Stewart, Stockton, Sumner, Van Winkle, Willey, and Yates.

ABSENT, — Messrs. Foot, Howard, and Wright.

The Chair then declared: "On this question the Yeas are 25 and

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the Nays 22. Two thirds of the Senators present not having voted for the joint resolution, it is not agreed to."

This vote showed the judgment of the Senate at that time. But, in order to keep the question open, it was, on motion of Mr. Henderson, reconsidered. Mr. Doolittle, of Wisconsin, then moved a substitute, basing representation on qualified voters, and also regulating direct taxes. Mr. Sherman, of Ohio, offered another substitute, founded on qualified voters, but with nothing on direct taxes. While these were pending, the subject was postponed on motion of Mr. Fessenden, and never resumed.

Much feeling was manifested by some of the supporters of the House attempt at amendment, when its defeat was known. Mr. Stevens, of Pennsylvania, took an early occasion to say: —

"It was slaughtered by a puerile and pedantic criticism, by a perversion of philological definition, which, if, when I taught school, a lad who had studied Lindley Murray had assumed, I would have expelled him from the institution as unfit to waste education upon. . . . . The murderers must answer to the suffering race. I would not have been the perpetrator. A load of misery must sit heavy on their souls. . . . . Let us again try and see whether we cannot devise some way to overcome the united forces of self-righteous Republicans and unrighteous Copperheads."[1]

The Fourteenth Amendment followed, and was adopted by both Houses of Congress during the present session. While undertaking to regulate representation, this Amendment had no recognition of exclusion from the elective franchise on account of "race or color." Though failing in directness, there was nothing in it to injure the text of the Constitution, or impair the idea of a republican form of government, always with Mr. Sumner a cardinal point. There were also other important clauses, defining citizenship, assuring for all "the equal protection of the laws," disqualifying certain persons from office until the removal of such disability by a vote of two thirds of each House of Congress, protecting the public debt of the United States, and annulling all debts in aid of rebellion or on account of the loss or emancipation of any slave.

The original object of the clause relating to representation was accomplished directly, before its ratification as part of the Constitution. After much debate, Congress yielded to the claim of power, and took jurisdiction of the elective franchise in the Rebel States, requiring, that, in voting on any State constitution in the reconstruction of the Rebel States, there should be no exclusion on account of race or color, and

[1] May 8, 1866: Congressional Globe, 39th Cong. 1st Sess., pp. 2459 - 60.

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that this prohibition should be embodied in the new State constitutions.[1] The Fifteenth Constitutional Amendment on equal suffrage followed.

Unquestionably the establishment of the equal rights of colored citizens at the ballot-box was one of the most important events in our political history. With few supporters at first, the cause grew in interest and strength until final success in the Acts of Reconstruction, and then in the Constitutional Amendment. This great result was accomplished by discussion and the gradual recognition of the national exigency.

PRESS AND CORRESPONDENCE.

MR. SUMNER'S speech was extensively circulated, and awakened much attention. The response of the country will be seen in the contemporary press and in letters addressed to him, which, while illustrating the speech, reflect light on the times.

The Washington correspondents concurred in accounts of the speech, and of the interest it created.

Henry C. Bowen, proprietor of the New York *Independent*, then on a visit to Washington, wrote to his paper of the first day of the speech: —

"SENATE CHAMBER, Monday Afternoon.

"Whatever may be said in regard to the political opinions of Hon. Charles Sumner, no one can deny his eminent ability as an orator and scholar, and to-day this world-renowned friend of the poor and the oppressed is speaking in the Senate, — I had almost said as orator and scholar never spoke before. His theme is the Rights of Man. The floor and galleries of the Senate Chamber are crowded with most attentive listeners, and such a spectacle as it is now my unspeakable privilege to witness is worthy of a thousand miles' journey. . . . . Never before have I heard in these halls such solemn appeals, never such noble and eloquent utterances. May the great Author of truth and justice continue to inspire the great Senator now speaking to do His will to the glory of His name!"

So also the correspondent of the Boston *Daily Advertiser*: —

"The finest audience of the session came out to-day to hear Mr. Sumner's great speech on the Amendment to the Constitution. Many persons were in the galleries before the Senate was called together at noon, and long before one o'clock, the hour at which the proposition was to be taken up, they were crowded to their utmost capacity. The morning hour was occu-

[1] Act of March 2, 1867: Statutes at Large, Vol. XIV. p. 429.

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pied with minor business, and it was a quarter past one when Mr. Fessenden called for the special order. He of course was entitled to open the debate, but, being unwell to-day, he yielded the floor to Mr. Sumner.

"The scene, when he rose to speak, was one that could not fail to touch the most indifferent heart. One fourth of the gentlemen's gallery was filled with colored soldiers, and the other seats and aisles of the remaining part of the galleries were closely packed with an intent and appreciative auditory, while on the floor were a large number of members from the House and several members of the foreign delegations resident in the city."

So also the correspondent of the Pittsburg *Commercial*: —

"The great event of the day and of the session in the Senate was Mr. Sumner's speech. The galleries were crowded to excess, as they have not been on any occasion before in a long time. Frederick Douglass was in the gallery, one of the most attentive listeners, and evidently the best-pleased man in the Chamber, as he heard the distinguished champion of his race plead so eloquently in its behalf. Nearly every member of the Senate listened with rapt attention to Mr. Sumner."

So also the correspondent of the Boston *Commonwealth*: —

"Mr. Sumner's great speech upon what constitutes a republican government is now being delivered in the Senate. It is the most powerful oration of his life, — the crowning glory of his scholarship and statesmanship. Never yet has any American statesman swept so wide a range of learning, so complete a circle of public law, history, philosophy, and jurisprudence, in support of so noble a principle as the one underlying republican government. Mr. Sumner spoke two hours yesterday, and will occupy about the same time to-day. The galleries were filled to overflowing. The Senatorial chairs were all occupied, while the floor was thronged by Representatives and others having the *entrée*."

The correspondent of the Boston *Journal* wrote of the second day: —

"Senator Sumner was honored to-day by such an audience as is rarely seen in the Senate Chamber. The Senators, wheeling around their chairs so as to face the speaker, listened with marked attention. Scores of Representatives filled the sofas or the floor and stood in groups, and the galleries were literally packed with earnest men and women, who drank in every word as the gifted orator proceeded. When he closed, the galleries applauded loudly, until Senator Pomeroy, who occupied the chair, secured order, while those on the floor crowded around Senator Sumner to offer earnest congratulations."

So also the correspondent of the New York *Tribune*: —

"Senator Sumner concluded his great effort at fifty-five minutes past two, having commenced at one. Diplomats, two Cabinet Ministers, and a much larger number of Congressmen than yesterday were on the floor,

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while all the galleries and approaches were densely packed with attentive listeners. As the argument of the speaker culminated, he became grandly eloquent, and his elaborate plea, which might rather be denominated an essay than a speech, for negro enfranchisement, unquestionably made a profound impression upon every intelligent listener. At its conclusion the floor and galleries broke forth in applause."

A few days later, the correspondent of the New York *Tribune*, after mentioning President Johnson's interview with the delegation of colored people headed by Frederick Douglass and George T. Downing, wrote: —

"As to Mr. Sumner's grand vindication of the fundamental principles underlying republicanism, it is unnecessary to repeat what has been said of the immediate effect it produced upon those who listened to it, — of the overcrowded galleries, the silent attention of the Senate, the members of the House who had left their own seats and eagerly thronged the floor of the Senate Chamber. . . . . And even now, since the sound has died away and there has been ample time for searching criticism, you can hear men who are not in the habit of following Mr. Sumner's views of policy say with heartfelt satisfaction, it was a grand speech, worthy of the Senate, worthy of the cause it defended, worthy of this Republic. I have hardly seen a Republican here who was not as proud of it as if he had made it himself. Even Mr. Sumner's opponents, the Democrats of the Senate and the House, yielded to it the tribute of their respect. That respect will go all over this country, and even beyond its boundaries; and while no thinking man in this Republic will take it up without feeling the irresistible weight of its logic and the ennobling power of its sentiments, it will abroad do more honor to American republicanism than any public act since the decree of Emancipation."

The correspondent of the New Orleans *Tribune* wrote: —

"You will of course give to your readers the great speech of Senator Sumner. His speech is one of the best ever delivered in the Senate, and it was delivered in the greatest of causes, — that of Human Liberty. It differs from the tone so common among so-called 'Democratic' orators for years past, both North and South, inasmuch as it contained neither abusive, personal, nor vindictive language. But it was calm, manly, dignified, — full of the subject in hand, treating it with frankness, — alluding to the opposite view with fairness, and even respect, while showing up their errors and weaknesses as one would those of a wayward child. For historical and legal research, critical analysis, and logical argument, it is unsurpassed. Concise, pithy, full of effective and happy illustrations, it was admirably conceived and presented."

The correspondent of the Richmond *Republic*, with equal appreciation, but less faith, wrote: —

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"In the Senate, the day was devoted to Sumner. He began speaking about one o'clock, and concluded his exhaustive argument in an hour and forty minutes. The burden of the whole of it was the absolute political and civil equality of all men, and his peroration was a loftier flight of majestic eloquence than the Senate has heard since the best days of Clay and Webster. While very few agree with Sumner in the present practicability of his ideas, and still fewer indorse them at all as tenets of political faith, yet there is but one opinion of the speech he has been making for two days, — that, simply as a monument of laborious research and good English, it is unsurpassed. When he concluded to-night, the densely crowded galleries could not be restrained, and burst out into vehement applause; but it was a tribute to the grandly classical language in which his ideas were clothed, and not to the ideas themselves. Charles Sumner may possibly be a patriot, but he is certainly a political philanthropist, and as such there is no probability that he will live to see his tenets practically enforced in the legislation of the country."

The correspondent of the New York *Times* wrote: —

"He exhausted ancient and modern history in gathering maxims and examples for the illustration of the points which he made. Portions of the speech were marked by great felicity of language and beauty of imagery. It exhibited, perhaps, more of the speculative theorist than of the practical statesman. Though he took pains to disavow everything of this character, and to present his views as the basis and guide of practical action, it was by far the most elaborate and comprehensive speech made in Congress for many years, and was heard with great attention by the Senate and crowded galleries."

A few extracts from newspapers will show how the speech was received at a distance.

The *Independent*, of New York, in printing the speech, thus noticed it: —

"Charles Sumner's argument for the Rights of Men ought to be printed by the hundred thousand, and scattered like seed-grain throughout the nation. It is a speech worth a lifetime to have achieved, — the greatest of all Mr. Sumner's great speeches. Standing in some respects almost alone in the Senate, his position is all the more morally grand for his isolation, and his plea all the more eloquent for his moral heroism. Generous readers will overlook their minor differences of opinion from Mr. Sumner, for the sake of agreeing with him to the full in the masterly, unanswerable, and incomparable argument which he has made in behalf of securing to every American citizen his just rights before the law."

The New York *Tribune* said: —

"Mr. Sumner concluded yesterday a great speech on the true basis of a Republic. We believe it will exalt his reputation as a statesman, a scholar,

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and a devotee of Liberty. It is elaborate; but his theme demanded thorough treatment, and we think very few who read the speech will find it too long. He will not convince the majority that the Federal Constitution, as it stands, empowers Congress to extend and guaranty the right of suffrage in the States lately in revolt to the black race, and especially to the freedmen; but he has very clearly demonstrated that it *ought* to be so extended, — that the rights of the humble, the hated, the scorned ought especially to be protected by their right to vote. Hear what he says on this point."

The Boston *Daily Advertiser* said: —

"There has been a good deal of amusement expressed at the evidence of industry, during the recess of Congress, presented by the sheaf of bills and resolutions offered by Mr. Sumner at the opening of the session. The copious use of authorities in his speech of this week shows that these numerous measures were not prepared without a careful survey of the ground upon principle and in history, nor without very profound inquiry into the underlying doctrines upon which the true glory of our institutions is established."

The Adams *Transcript*, of Massachusetts, said: —

"In this work of clearing away the rubbish of lies which Slavery has heaped upon the real doctrines and purposes of the Fathers, and bringing out into clear, glorious relief the great truth and work of the Revolution, Mr. Sumner has performed a service which no public man of our politics has equalled. The whole of our history is searched and illumined, and the most overwhelming mass of evidence produced to the point, that a true construction of the Constitution gives all men who pay taxes representation and the ballot, thus basing free government upon the consent of the governed. No such argument for free government has been made in our day. For learning, cogency of logic, wealth of illustration, felicity and splendor of diction, nobility of tone and sentiment, and genuine eloquence, it will take rank with the highest of forensic efforts. Already its effect is visible in the political atmosphere. The public feeling and thought have received an obvious elevation."

The Rochester *Democrat*, of New York, said: —

"It will be observed, as a remarkable characteristic of this great speech, that it is but slightly controversial in its character, but is devoted mainly to the elucidation of the general principles of republican government, which are discussed with an elevation of sentiment, a depth of learning, and a power of logic that entitle it to a place far above the transient expressions of the views and passions of the hour. It will stand for ages, a noble and enduring monument of the highest range and scope of American statesmanship, and will be read with profit and admiration long after the questions of the day have been settled and forgotten, or remembered only by students of

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history. Its immediate effect, however, on public sentiment cannot fail to be vast and beneficial.

The Dayton *Journal*, of Ohio, said: —

"As an exposition of the American theory of Republicanism, this speech is unsurpassed in the history of American oratory. It is a magnificent contribution to our political literature. It is candid and temperate, the speech of a statesman and patriot who earnestly seeks the welfare of all his countrymen. It abounds in splendid passages, and is a model of classic strength and elegant style. The partisan sneers of demagogues cannot prevail against it."

The Portland *Daily Press*, of Maine, said: —

"It is not only *the* great speech of Charles Sumner's life, but it is the great speech of the age. It is perfectly exhaustive, free from all personalities, free from all idiosyncrasies, statesmanlike, philosophical, and calculated to become a lasting memorial of its author's research, patient investigation, power of analysis, and, above all, his undying devotion to the cause of popular liberty and human rights."

The *Progressive Age*, of Belfast, Maine, said: —

"It is beyond question the greatest effort of our most distinguished New England statesman, and will make his name dear to every friend of freedom and equal rights in all coming time. It is throughout the language of the calm, conscientious statesman. Avoiding all mere expedients and controversies concerning details, it fixes the attention upon the great principles of a free republican government; and never in our history have those principles been so clearly and forcibly elucidated."

The Bangor *Jeffersonian*, also of Maine, said: —

"In the United States Senate, on Monday and Tuesday of last week, Mr. Sumner made a speech which will occupy a very conspicuous place in the history of the American Union, not so much for its advocacy of any merely formal plan or scheme of national legislation for Reconstruction as for its closer relations to the great fundamental principles which constitute the ideal of a truly republican government. It goes to the very foundation of things."

In a leading article of more than two columns, the New York *Herald* said, in a different vein: —

"MR. SUMNER'S ORATION. — NEGRO SUFFRAGE THE WHOLE DUTY OF THE NATION, AND THE ONLY ESCAPE FROM OUR DIFFICULTIES. — Mr. Sumner, in his Senatorial pleading in the case of the negro, has given to the country an elaborate evidence of the utterly impracticable and visionary

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character of his political views. His oration is admirable in all purely literary respects, and indicates an abundant industry and research; but its theories of society, its interpretations of the Constitution, and its assumptions as to the history of the country and of the war are inadmissible, excepting only what is said of the Constitutional Amendment. . . . .

"Those parts of the oration which claim suffrage for the negro, as a necessary policy of the nation, will require but little answer by argument; for the country and the world — all men outside the Radical Republican party — will completely deny the truth of the points from which they start. . . . .

"We quite agree with Mr. Sumner in the grand fact that the Constitutional Amendment gives Congress full power to settle the position of the negro in the Southern States, and even to give him the suffrage. We are quite sure that this oration has not shown the necessity, the justice, or even the expediency of this gift. Still it may be expedient, necessary, and just"

The speech attracted attention in Europe. In the *Revue des Deux Mondes*, of Paris, which is so comprehensive a representative of the French mind, a leading article by M. Forcade presents a parallel between Mr. Sumner's speech and the famous speech of the time in the French Assembly by M. Thiers, where Liberty was the theme.

"The very day when M. Thiers delivered his speech we were occupied in reading the remarkable speech which Mr. Sumner has just pronounced in the Senate at Washington, and which the last mail from America has brought us. The speech of Mr. Sumner is the recent political event in the United States.

"The illustrious American Senator, the chief of the radical party in the Senate, proposed to himself to deduce from the most careful examination of the Constitution of his country those principles according to which should be settled that difficult problem which the Americans call Reconstruction, — that is to say, the return of the Rebel States into the Union. We shall not undertake to judge the practical bearing of the opinions of Mr. Sumner on the great question which agitates the United States; but it is impossible for us not to render homage to the patriotic piety which breathes in his beautiful discourse. As M. Thiers wished to derive the liberal destinies of France from the great principles of the Revolution, so Mr. Sumner applied himself to exhibit in the origin of the Constitution of the United States the fundamental principles of republican government of modern times. . . . .

"Is it not a remarkable coincidence, that these voices of two great patriots, who, almost at the same moment, without any concert, obey instinctively the mysterious law which moves the people destined to guide civilization, answer to each other with so much splendor from opposite sides of the Atlantic? All the news from the United States show that the effect produced by the speech of Mr. Sumner has been immense. . . . . The habitual adversaries of Mr. Sumner, the Democrats in Congress, covered themselves with honor in uniting in the testimonials of respect which were so univer-

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sally rendered to the radical Senator. In the pride inspired by this beautiful and good oratorical plea, the Americans turn in a friendly spirit toward our Old World, and do not dissemble the hope that this speech will do them more honor in Europe than any public act in their country since the decree of Emancipation. We are charmed, for our part, to justify this hope." [1]

CORRESPONDENCE.

NUMEROUS letters, from various persons and quarters, attest the general interest, marked in many cases by feeling and personal gratitude seeking to express itself. Brief extracts from a portion only are given.

Theodore Tilton, editor of the New York *Independent*, wrote just before the speech: —

"I protested with all my heart against the Amendment offered by the Committee of Fifteen. It don't execute justice. It leaves the negro to the decision of the Rebel. It proves that a republic is ungrateful.

"I am glad to notice by the *Tribune* of this morning that you are to move an Amendment, or rather a substitute for that Amendment."

[FROM MASSACHUSETTS.]

William Lloyd Garrison, the early Abolitionist, always persistent against Slavery, wrote from Boston: —

"I have perused your eloquent and unanswerable speech on the Suffrage question, and need not say that it contains the noblest sentiments, to which all the faculties and powers which God has given me thrillingly respond. It will doubtless be more efficacious out of the Senate than in it, as it will help to educate the popular mind up to the point of abolishing all complexional distinctions before the law, North and South. . . . . Your speech, based as it is upon absolute justice and eternal right, is an admirable elementary treatise, and I trust will have the widest circulation. . . . .

"What assiduity and perseverance, what courage and determination, what devotion and inflexible purpose you have shown, through fiery trials and at the risk of martyrdom, 'in season and out of season,' to effect the downfall of the atrocious slave system, and thereby elevate and save the Republic! If to this extent the year of jubilee has come, you have done much towards ushering it in, and have a right to be specially glad and grateful that Heaven has been pleased to make you so potential an instrumentality in bringing about its beneficent designs."

Wendell Phillips, who never failed to sympathize with efforts for Human Rights, wrote from Boston: —

[1] Revue des Deux Mondes, 1 Mars, 1866, Tom. LXII. pp. 245, 246.

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"We are all inexpressibly grateful for your brave position and words. You and half a dozen others redeem Congress. Your arguments have been grand and exhaustive. You never linked so many hearts to you as during the last two months."

Elizur Wright, the veteran Abolitionist, wrote from Boston: —

"Your speech and vote on the Blaine Amendment ought to produce a thrill of life and joy and hope through every spinal column that supports a loyal soul. We can't afford any of the old nonsense. We took our sable friends into our boat when it was *bulleting;* and if we allow them to be thrown overboard by the traitors now it is *balloting*, we sink, in short."

George Bemis, the eminent lawyer and publicist, wrote from Boston: —

"I think that you may justly rank it among your greatest efforts, and that it will go into history as the great statement of the Freedman's claim to participate in the government of the country of which he makes part. The general student of governmental law and civil polity will also constantly refer to it as a new and important development of the connection between representation and executive sovereignty, and as a powerful *exposé* of the true basis of republican institutions. You have done a great service to the colored race, to the science of statesmanship, and to your country, all at once."

Hon. Charles P. Huntington, for some time an able Judge of the Superior Court, wrote from Boston: —

"If your opposition does not just now reflect the feeling of New England Republicans, it anticipates their sober judgment. Theoretically, at least, it deprives the black race of representation, and punishes them for acts of legislation in which they have no voice."

Hon. Theophilus P. Chandler, able lawyer and Assistant Treasurer, wrote from the United States Treasury, Boston: —

"Eloquent, exhaustive, unanswerable."

Hon. George B. Loring, afterwards Chairman of the State Committee of the Republican party in Massachusetts, and President of the Massachusetts Senate, wrote from Salem: —

"Your masterly speech will one day be reached by Congress and the people, — I trust, in your day and mine. The best minds believe in it; the best hearts take courage from it."

Hon. E. L. Pierce, afterwards Secretary of the Board of Charities in Massachusetts, wrote from Boston: —

"I read last evening, at one session, your last speech in the Senate. It is a noble one, and right in all respects. One passage near the close reminds

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me of the famous passages of Curran and Brougham about Freedom. I agree with you about the proposed Amendment."

Thomas Sherwin, head master of the Boston High School, father of General Sherwin, and a tutor of Mr. Sumner at Harvard College, wrote from Dedham: —

"Allow me, as an old friend, to congratulate you and to thank you for your noble speech in the Senate on the 5th. I obtained it last evening, and read the whole before I slept. In humanity of sentiment, in true patriotism, in completeness of argument, in fulness of illustration, you have left nothing to be desired.

"This Reconstruction is, indeed, a momentous affair, and I feel a greater doubt of its just determination than I felt for that of arms while the war raged."

Rev. John T. Sargent, always swift to sympathize with Mr. Sumner, wrote from Boston: —

"It is emphatically *the* speech of the time and crisis, absorbing, superseding, and transcending every other. God bless you for these timely words! They ought to be widely circulated, and reprinted in every corner of our land, East, West, North, and South."

Rev. George C. Beckwith, Congregational clergyman, and Secretary of the American Peace Society, wrote from Boston: —

"Nothing but the constant feeling that you are constantly overtasked has kept me from writing you on several occasions. I will only just say now, that I owe you a thousand thanks for the great and noble services you are rendering. God give you strength and life and full opportunity to complete your work!"

Rev. R. S. Storrs, the eminent Congregational clergyman, wrote from Braintree: —

"I am sure that I express but the common sentiment of the people all about me, when I say that your own course meets with more than a hearty approval, even admiration and gratitude. May God give you wisdom and firmness equal to the emergency, and crown your arduous labors with the success they deserve!"

E. E. Williamson, one of the earnest men of Massachusetts, wrote from Boston: —

"Your whole argument is founded upon righteousness and justice, and cannot be overthrown. What a glorious record you are making for future generations to peruse with gladness, and by which record your name is made as imperishable as the hills of your native State! I hope God will spare you to finish the good work you are in, and many years after to reap a slight portion of your reward."

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Nathaniel C. Nash, a merchant devoted to the national cause, wrote from Boston : —

"The multitude who thronged to the Senate Chamber, together with the representatives of foreign governments, to listen to your speech (which I term the New Testament of the Nineteenth Century), was an exhibition of the world's interest in how well or ill you finish the great battle for human freedom, not for one continent, but for civilized man."

Hon. Charles G. Davis, a stanch Antislavery Republican, wrote from Plymouth : —

"Your course is fully approved here by a majority of the Republicans, and by all who have opinions. Besides all this, you will be historically right, now that the Amendment is defeated. . . . . It is the greatest work of your life, unless your opposition to Lincoln's Louisiana scheme may prove such, if you even succeed in keeping out the mongrel States."

Augustine G. Stimson, desiring to express his sympathies as a constituent, wrote from Boston : —

"Last evening I read your speech from beginning to end, with an interest that awakened admiration and gratitude. The Equal Rights of All is the only sure guaranty for the present and future of mankind."

William E. Chase, formerly a private in the national army, wrote from North Uxbridge : —

"Please accept the thanks of a poor private for your noble, courageous, and Christian efforts in the great cause of Right, Justice, and Liberty, when Justice is unpopular, and you are obliged by duty to meet both friend and foe in this conflict."

F. W. Pelton wrote from Boston : —

"I desire to thank you for your late noble speech in favor of legal equality in this country. I read it with deep interest. Your propositions are sound, and the great lights of history you marshal up to sustain them impressed me forcibly."

William Plumer wrote from Lexington : —

"Please accept my thanks for the copies of your very able and learned speech on the right of universal suffrage. Whatever may be the practicability of this principle at the present time, and however the country or Congress may settle the question in the future, your arguments are certainly unanswerable, and will ever remain an enduring monument of your earnest labors in behalf of the Freedman."

Richard L. Pease, Clerk of Courts, wrote from Edgartown : —

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"It was with feelings of intense satisfaction that I read the report of your recent speech on equal suffrage, as it appeared in the Boston *Journal*. The argument is so clear and able that it would seem that no intelligent man of candor could deny the conclusions. Adherence to the Right because it is the Right will never fail to commend itself to all right-thinking men."

Rev. Robert Crawford wrote from Deerfield: —

"I thank you for that noble speech, ... so logical, so happily illustrated, so full of earnestness and soul, and withal so convincing. I rejoice that there is one in our highest councils who feels as you do on the subject, and who has the ability and the courage to make such a speech."

Rev. Patrick V. Mayce, a priest of the Roman Catholic Church, wrote from Northampton: —

"I am often reading your admirable speech of March 7th, and so much am I impressed with the justice of the principles it inculcates with so much classical ability and statesmanly wisdom and foresight, that I cannot possibly deny myself the honor of taking this method of testifying to you my heartfelt congratulations. You are the one man among many who seems to have studied the present exigencies of your noble country, and to have judged aright the requirements of the age you and we all live in at present. The benevolent qualities of heart which distinguish you in this great speech are in perfect keeping with the towering majesty of your well-cultivated intellect. Go on. Lead and triumph, and accept the blessing and prayers of a Roman Catholic priest, who begs to subscribe himself, with profound esteem and high consideration, your most humble and devoted servant."

The New England Conference of the Methodist Episcopal Church, meeting at Chicopee, Massachusetts, March 28th, adopted a resolution, officially communicated to Mr. Sumner, which, after declaring approbation of both Houses of Congress, proceeds: —

"Especially do we offer our sympathies and prayers for our own honored Senators, one of whom has endured in the past, with a martyr's fortitude, the barbarous assaults upon his person of the champion of Slavery, and has lately been called to endure an equally unjustifiable assault upon his reputation by the present Chief Magistrate of the United States."

[OUT OF MASSACHUSETTS.]

Hon. Israel Washburn, Collector of the port of Portland, formerly Governor of Maine and a distinguished Representative in Congress, wrote from Portland: —

"When I obtained Wilson's bill, which prohibited the denial by the States of *civil* rights to persons on account of color or race, I wrote him to inquire why he had not said also *political*. The authority is certainly as

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clear for the latter as for the former. So, when, last evening, I read your resolution and speech, I was strengthened and rejoiced. Your positions are impregnable, and your speech, I think, the greatest of your life. We must stand there, or not at all."

In another letter, Mr. Washburn wrote: —

"When men as patriotic and sincere as I am, and a great deal wiser, sustain the Blaine Amendment, I am confounded, and don't know what to make of it. To my mind it is most abhorrent, and I hope it will not receive the assent of Congress."

Rev. Rufus P. Stebbins, a Unitarian clergyman, wrote from Portland, Maine: —

"You have fought a good fight. The Amendment proposed was defeated. *Laus Deo!* It was a blot too dark and foul to be permitted to stain the Constitution. To speak of 'race and color' in that instrument would be an insult to the men who framed it."

Rev. A. Battles wrote from Bangor, Maine: —

"As a native of Massachusetts, and more than that, as a lover of my race, I want to thank you for your timely and eloquent words in behalf of universal and impartial justice. I thank you also for voting against the Blaine Amendment. Though it might accomplish one desirable object, it was a concession to prejudice against color. The black man could hope for nothing through it. We want no more compromise."

Hon. William Greene, an enlightened citizen, who has held various public offices in Rhode Island, wrote from East Greenwich: —

"I beg to congratulate you as a friend, and to thank you as an American citizen, for the great speech recently delivered by you in the Senate. You have opened a new field of thought to American statesmen, and furnished a new book of elementary political lessons to the American people. It would seem almost impossible that such an effort should not tell grandly upon both."

Hon. Gerrit Smith, the devoted Abolitionist, formerly a Representative in Congress, wrote from Peterboro, New York: —

"God bless you for this noble speech which you have made against the Apportionment Amendment! I have this day read the part of it in yesterday's New York *Tribune*. I long to read the whole of it."

In another letter, Mr. Smith wrote: —

"You are the keystone of our arch. If you fail, all falls."

Hon. N. Niles, formerly in the diplomatic service, wrote from New York: —

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"I admire and applaud the tenacity with which you advocate the equal rights of all men of all races under one Constitution and Government. . . . . I hope you will stand up for the Asiatics as well as for the negroes. They are now treated as brutes in some of our States."

Cephas Brainerd, lawyer, and arbitrator under the last treaty with England against the Slave Trade, wrote from New York: —

"Nearly all the copies of your great speech that I obtained have been circulated, and I don't find any one who dares deny the correctness of the doctrines you lay down. It has my hearty assent, and I have subjected it to the examination which the argument of an opposing counsel receives from me. I consider that very many of your Senatorial speeches will be quite as permanent as any of Burke's productions; but this last seems to be as enduring as the Constitution of our country, whether as the foundation of a government or as a matter of mere study."

Rev. Henry Ward Beecher, always on the watch-tower, wrote from Brooklyn, New York: —

"Although I do not think with you on the specific change in the Amendment which you advocate, I cannot forbear expressing my thanks for your noble speech, which has the merit of rising far above the occasion and object for which it was uttered, and covering a ground which will abide after all temporary questions of special legislation have passed away.

"I wish that your oration might be in every school library in the Union. May your life be prolonged, and every year add some new jewel to the crown of fame, that, when you go to a higher sphere, men will place upon your name!"

Rev. A. P. Putnam, Unitarian clergyman, also wrote from Brooklyn, New York: —

"I bless God for the firm and lofty stand you have taken, and the people will yet see, if they do not now see, that it is the only wise and sure one for Union- and Freedom-loving men to take. Would that all loyal men, especially the great Union party, could see it to be their duty and their interest to meet boldly and grandly the issue which the President seems determined to force upon them!"

Rev. F. C. Ewer, anxious against compromise, wrote from New York: —

"I am but one of thousands whom you little think of as watching you with anxiety, and to whom your present firm position has given great cheer and comfort. Of course there are many who have always stood with you, and who must be sources of encouragement; but we are new recruits, who have had enough of 'compromise,' and who see no hope of permanent peace ahead except under a thorough adjusting of the Constitution to the principles of the Declaration of Independence."

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James P. Lee and fourteen others united in a letter from Herkimer, New York: —

"In this centre of the Empire State there are not a few who would express their thanks to you personally, if they could, but more especially to God, our Heavenly Father, for having endowed you, as Joshua of old, with the determination to lead His oppressed people to the promised land, 'a land flowing with milk and honey' (not with disgrace), after their Moses had been taken from them."

F. Hawley wrote with much feeling, from Cazenovia, New York: —

"In God's name, in the name of Justice and Freedom, and in behalf of the millions of God's outraged poor, I thank you for your noble speech. Brooks could not kill you. God predetermined that you should live to be mouth for Him, that this preëminently guilty nation might know their duty, and that the great idea that lies at the foundation of all righteous civil government might be vindicated. It is to be regretted that your proposition could not have been brought forward before the House had committed itself to that miserable Amendment."

Alexander Ostrander, a lawyer, wrote from New York: —

"I thank God that we have a man in the Senate bold enough and capable enough to point the nation the road back to the foundation principles of the Government."

E. W. Stewart, originally of the Liberty party, wrote from North Evans, New York: —

"Having read your truly noble plea for the 'great guaranty' of personal and political rights under the Constitution, in the Senate, I write to thank you with my whole heart. It is the right word spoken at the right time and in the right place, and it will reach the hearts of the people and produce there a deep conviction, if it does not in Congress. . . . . The positions in your speech are unanswerable."

Dr. Henry A. Hartt, a radical Abolitionist, wrote from New York: —

"I must tell you how proud I feel, as a man and as an American citizen, on account of the position you have taken. When the Amendment of the Committee was proposed, I felt chagrined and mortified beyond expression, and I did fervently pray that we might be saved from the intolerable infamy of putting into our Constitution a sanction, even by implication, of the right of a State to deny or abridge the franchise in consequence of race or color. You may, then, imagine my joy, when I saw you break loose from all considerations of policy and party, and place yourself immovably upon the elevated platform of a just and righteous statesmanship.

"I have read the report of your speech in the extra of the *Tribune*, and I am sure that history will confirm the verdict which I give, when I say that it was equal to the great occasion."

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Edward Cary, editor of the Brooklyn *Daily Union*, wrote from that place: —

"The loyal people in Brooklyn have felt very keenly the outrage and insult you have suffered at the hands of Mr. Johnson. They honor and trust you, and will uphold you. The mention of your name by Mr. Garrison, on Tuesday evening, drew from the large audience rounds of applause, which died away only to be renewed, until it was the most prolonged I ever heard."

William Silvey, of New Jersey, earnest in patriotism and Anti-slavery, wrote from Alexandria, Virginia: —

"How all the hearts of the true lovers of their country, even in this rebellious city, are thrilling with gratitude and thankfulness for your uniform noble efforts, which have opened and will continue to open the eyes of the citizens of our country and the whole world as to the true significance or meaning of what constitutes a republican government, which has been so sadly perverted by our practice as a nation!"

W. H. Ashhurst, an eminent merchant, wrote from Philadelphia: —

"I have read nothing for a long while that has moved me so much as your speech in the Senate on the 5th and 6th inst."

George D. Parrish, an earnest friend of peace, wrote from Philadelphia: —

"I have written you more than once before, but, having no personal acquaintance, hesitated to thank you for the strength and instruction which really called for thanks and congratulations. You have done nobly, Sir, for your country and for this generation."

Joseph T. Thomas, of the Pennsylvania House of Representatives, wrote from Harrisburg: —

"You may be vilified and abused, and no doubt are, as all great benefactors of their race are in their day and generation. But future ages will do you full justice, and your name will be illustrious when the names of your revilers will be consigned to the most ignoble oblivion."

T. E. Hall wrote from Galion, Ohio: —

"In the joy of my heart I congratulate the people of this Government that the old ship of state has at its helm a statesman who, despite the storms, the howling tempests, the Cimmerian darkness which enshrouds us, stands boldly and fearlessly at his post, unawed, calm, self-possessed, ready for any emergency.

"The great speech, portions of which it has been my privilege to peruse, is only second in importance to President Lincoln's proclamation which

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liberated four millions of slaves; and, indeed, this speech carried out is virtually but the fulfilling of that proclamation."

Rev. George Duffield wrote from Detroit, Michigan: —

"I feel constrained, though entirely unknown to you, to thank you most cordially for the intense pleasure I have enjoyed in the perusal of your great oration on the question of Universal Enfranchisement, as involved in the proposed Constitutional Amendment, looking towards universal suffrage. Its lucid didactic statements, its admirable analysis, its irresistible logic, and its glowing, brilliant eloquence, with its valuable historic instruction and its burning love of freedom and humanity, have both convinced my understanding and captivated my heart."

Rev. Charles H. Brigham, an accomplished Unitarian clergyman, in a letter describing an exhibition at the University of Michigan, wrote from Ann Arbor: —

"But the most attractive piece on the programme, which brought the house down with the most prolonged and hearty applause, was Number Four [entitled "Charles Sumner"], in which a most glowing and animated tribute was paid to the scholarship, industry, fidelity, patriotism, love of justice, and love of man, of the Senator whom Massachusetts delights to honor. It was a delight, I assure you, to a Massachusetts man, and a friend of yours, to hear, out here in the West, among these 'Fogies' and 'Copperheads,' such noble words about the old Bay State and her representative man, and to hear the response to them from the great audience."

Hon. Charles V. Dyer, a Judge under the final treaty with England against the Slave Trade, wrote from Chicago: —

"I am greatly your debtor for your two speeches, in a form for preservation and re-perusal, and any word of mine in regard to their ability or patriotism is quite needless. But I will say that the courage that can face cold looks of friends, cruel animadversions of one's own party press, and, what is easier, the unceasing abuse and bullyism of the enemies of all good, is so rare that it commands my admiration."

Jesse W. Fell wrote from Normal, Illinois: —

"I have just finished reading your late speech on Reconstruction, and I cannot forbear dropping you a line to say how much I have been gratified by its perusal. I will not characterize it as under different circumstances I should be tempted to. Suffice it to say, in my poor judgment it is the noblest, ablest effort of your life, and is just the document to send broadcast over the land."

James H. Alderman wrote from Jacksonville, Illinois: —

"A thousand thanks for your incomparable speech, expounding and defining the true theory of a republican government. Yes, I say a thousand

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thanks. I have always believed the Constitution was fully adequate for every exigency. Congress, therefore, must of necessity guaranty to every State a republican form of government."

Worthington G. Snethen, an Abolitionist, of Baltimore, wrote: —

"Thanks, thanks for your two great speeches. They will live and breathe and stir the heart of humanity, when the memory of A. Johnson and his Republican renegade sycophants will be forgotten, or brought to mind only to be execrated. Millions of black men bless you now, and hundreds of millions of God's dusky skins will bless you in the ages to come, for these two grand and eloquent vindications of human liberty from the assaults of despotism, caste, and the white man's meanness; and the white world, too, far down in the future, will bless your name. The spirit of prophecy pervades every line of these speeches, and lights up every step you take with the blaze of logic and truth. . . . .

"Your resistance to the Trojan horse of the Apportionment Amendment I sincerely hope was crowned with success in to-day's vote. That Amendment is the basest compromise that has yet bubbled to the surface of the cesspool of American politics. . . . .

"You must all come to it, sooner or later. Congress must legislate impartial suffrage into all the States by direct statute. Strange that the States in Congress cannot do what the States separately out of Congress can do!"

Hon. R. Stockett Mathews, the orator and lawyer, wrote from Baltimore: —

"I thank you most profoundly for the seasonable courage which will admonish others of their duty, although I have but small hope of witnessing any immediate fruition of the good work you have done for us all."

F. W. Alexander, of Maryland, who served patriotically in the war, wrote from New York: —

"I read your speech in the paper this morning, and I write to express my gratification that you have refused to accept any half-measures, but have sought to induce Congress to proceed in its work of Reconstruction on the only sure foundation, that of justice to all. Whether the measure is carried or not, your speech will not be lost, and it is a mere question of time."

S. F. Chapman wrote from Alexandria, Virginia: —

"I thank you for your speech. I think it an honor to the age in which you live, and believe it will remain a monument to your genius and eloquence. I am proud of it, and that you sent it to me. I shall preserve it, and leave it to my children, as one of the noblest consecrations to Liberty and Man."

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John W. Osborne, Hospital Steward of the United States Army, wrote from Washington: —

"That elaborate exposition will endure for ages as a monument of your noble patriotism and unparalleled eloquence. Its sentences will be read with grateful emotion by the freedom-loving people of all nations, and their prayers for your welfare and warfare will daily ascend to Heaven."

Rev. Henry Highland Garnet, a colored clergyman and orator, for some time settled in New York, wrote from Washington, where he was on a visit: —

"I was one of the many who heard your speech which you concluded yesterday afternoon in the Senate of the United States, and I take this opportunity to tender you my thanks and undying gratitude for that glorious and inspired production. I think that I may safely say that you have the gratitude of my entire race for your fearless and radical advocacy of the rights of all men, as I know you have their sincere and ardent love.

"After having slept upon your speech, and the excitement which was produced at the moment of its delivery is somewhat subdued, I must say, that, if I were able, I would cause a million of copies to be printed and scattered over the land."

This was followed by the presentation of the Memorial Discourse by Mr. Garnet in the Hall of the House of Representatives, Washington, February 12, 1865, with the inscription, "To the Hon. Charles Sumner, as a small and humble token of respect, and admiration of the ablest speech ever delivered in the Senate of the United States."

Among the most enlightened women of the country the pending question awakened a deep interest; nor was their testimony wanting.

Mrs. Josephine S. Griffing, devoted to good works in Washington, and especially to the care and protection of poor colored people, young and old, wrote from Washington: —

"I hope I shall not be considered intrusive in expressing to you my deep gratitude for and high estimation of your unparalleled speech, made in the United States Senate, February 5th and 6th, not only as contrasted with that of President Johnson to the colored delegation, but as an independent effort, the greatest, because the broadest in its application, of any ever made before the American people."

Mrs. L. M. Worden, sister of the late Mrs. William H. Seward, and always a warm Abolitionist, wrote from Auburn, New York: —

"Please accept my thanks for your noble speech of the 5th and 6th of February, which I have read and re-read with great attention and deep gratitude and admiration. This 'testimony of the truth' will add yet

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another bright page to the record of your undeviating fidelity to the cause of Justice and Humanity."

Mrs. Horace Mann, widow of the philanthropist, teacher, and Representative in Congress, wrote from Concord, Massachusetts: —

"I presume you will receive a thousand letters expressive of the satisfaction and delight that your speech upon the Suffrage question has given; and yet I must add mine, for it is but rarely that one feels that a moral subject is exhausted, and you appear to have accomplished this astonishing result. It is difficult to conceive how Congress can act otherwise than in the highest manner, after listening to it and reading it."

Miss Susan B. Anthony, so earnest to secure suffrage for her own sex, was not less earnest for the colored race: —

"A thousand thanks for your renewed, repeated protest against that proposed Amendment. You stand in the Senate almost the lone man to vindicate the absolute Right. May you be spared these many years, thus to stand and thus to speak!"

PRESIDENT JOHNSON AND HIS COUNTER MANIFESTATIONS.

An immediate effect of the speech was to hasten yet more the issue with President Johnson. On the day after its delivery he was visited by a delegation of colored citizens, who pleaded especially for the ballot. The President answered with feeling, that he had always been a friend of the colored race, and said: —

"I do not like to be arraigned by some who can get up handsomely rounded periods, and deal in rhetoric, and talk about abstract ideas of Liberty, who never perilled life, liberty, or property. This kind of theoretical, hollow, unpractical friendship amounts to but very little. While I say that I am a friend of the colored man, I do not want to adopt a policy that I believe will end in a contest between the races, which, if persisted in, will result in the extermination of one or the other."

The idea of "a contest between the races" recurred in stronger language, when, alluding to the colored man, he spoke of "the sacrifice of his life and the shedding of his blood. . . . . I feel what I say, and I feel well assured, that, if the policy urged by some be persisted in, it will result in great injury to the white as well as to the colored man. . . . . The query comes up right there, whether we don't commence a war of races. . . . . I do not want to be engaged in a work that will commence a war of races. . . . . I feel a conviction that driving this matter upon

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the people, upon the community, will result in the injury of both races, and the ruin of one or the other."[1]

Shortly afterwards he was reported in the press as saying to a colored delegation of North Carolina, "I suppose Sumner is your God"; to which the spokesman replied, "We respect and love Mr. Sumner, Sir, but no man is our God."

Then came the incendiary speech of the 22d February, when the President, standing on the steps of the Executive Mansion, threw away all reserve.

"I am opposed to the Davises, the Toombses, the Slidells, and the long list of such. But when I perceive, on the other hand, men [*A voice*, "*Call them off!*"] — I care not by what name you call them — still opposed to the Union, I am free to say to you that I am still with the people. I am still for the preservation of these States, for the preservation of this Union, and in favor of this great Government accomplishing its destiny."

Here the President was called upon to give the names of three of the Members of Congress to whom he had alluded as being opposed to the Union.

"The gentleman calls for three names. I am talking to my friends and fellow-citizens here. Suppose I should name to you those whom I look upon as being opposed to the fundamental principles of this Government, and as now laboring to destroy them. I say Thaddeus Stevens, of Pennsylvania; I say Charles Sumner, of Massachusetts; I say Wendell Phillips, of Massachusetts."

Becoming excited in speech, the President followed the charge of opposition to the fundamental principles of this Government with an accusation of a different character.

"Are those who want to destroy our institutions and change the character of the Government not satisfied with the blood that has been shed? Are they not satisfied with one martyr? Does not the blood of Lincoln appease the vengeance and wrath of the opponents of this Government? Is their thirst still unslaked? Do they want more blood? Have they not honor and courage enough to effect the removal of the Presidential obstacle otherwise than through the hands of the assassin?"[2]

Mr. Sumner never made answer or allusion to this Presidential attack, but others did. It became the subject of debate in the House of Representatives of the Massachusetts Legislature, on resolutions by Hon. George B. Loring, the Representative of Salem, already mentioned

[1] McPherson's Political History of the United States during Reconstruction, pp. 53–55.

[2] Ibid., p. 61.

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in this Appendix.[1] His reasons for vindication of Mr. Sumner were private and public, according to the report of the debate.

"The first men to congratulate him on his change [from the Democratic party] were John A. Andrew and Charles Sumner; and he should not forget that Mr. Sumner, against whom he had warred so long, was the first to extend sympathy to him, and had led him on till this day.

"Passing now to the public reasons for his advocacy of the fourth resolution, Mr. Loring paid a high eulogium to Senator Sumner, who, he said, would live in history with Adams and Hancock, for his adherence to and courageous advocacy of great principles, and his remarkable record since the war of the Rebellion broke out. Men might say that Mr. Sumner was an impracticable theorist; but it was to him, more than to any other man, that we owed the defeat of the iniquitous Louisiana proposition in the last Congress, the success of which would have established a precedent fraught with great danger to the nation."[2]

The resolution, adopted by the House March 14, and the Senate April 7, 1866, was as follows: —

"*Resolved*, That, while thus expressing our confidence in our Senatorial and Representative delegations in Congress, and the determination of the people to stand by them, we are also impelled to take notice of the recent charges made by name against one of the Senators of this State, Hon. Charles Sumner, in the lately published speech of the President of the United States, and to declare that the language used and the charges made by the President are unbecoming the elevated station occupied by him, an unjust reflection upon Massachusetts, and without the shadow of justification or defence founded upon the private or public record of our eminent Senator."

A copy of the resolutions, containing the foregoing, engrossed on parchment, was forwarded to Mr. Sumner by the Governor of Massachusetts, Hon. Alexander H. Bullock, with a letter, saying, "This I take great personal pleasure in asking you to accept and preserve."

The Aldermen of Boston, by a resolution, under date of March 2d, interposed their "indignant conviction of the utter falsehood" of the charges against Mr. Sumner.[3]

This testimony may be closed by that of a Massachusetts pen. In the New York *Independent*, Mrs. Lydia Maria Child, replying to the President, said: —

"Let any man capable of forming an opinion independent of party prejudice look candidly at the whole course of the Hon. Charles Sumner, and

[1] *Ante*, p. 255.

[2] Boston Daily Advertiser, March 8, 1866.

[3] See, *post*, p. 280.

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say whether any nation was ever blessed with a public man intellectually more able and consistent, and morally more courageous, pure, and noble. What a tower of strength he has been in times of difficulty and danger! How brave and steadfast he has been in the midst of denunciations and threats! How much he has suffered in the cause of Freedom! and how calmly and heroically he suffered, never boasting or complaining! What herculean labor he has performed, and every particle of that labor to sustain and advance those principles of justice and freedom which form the only sure basis of a republic! I am glad to see that Boston has, at last, by the voice of its city government, shown due appreciation of the services rendered to the country by that truly great and good man."

Such was the conflict then raging, with Truth gaining new strength daily.

PERSONAL SAFETY.

FROM his first arrival in Washington as a Senator, as far back as 1851, Mr. Sumner had been pursued by menace of personal violence. At the beginning of the present session he received a warning,[1] while the head of the military police reported to him at least one conspiracy against his life, with regard to which he had evidence. The prevailing bitterness, especially after the speech of President Johnson, arrested the attention of Hon. A. P. Granger, a retired Representative in Congress from the State of New York, whose experience in the anxious days of Kansas, when Mr. Sumner suffered personal violence, put him on his guard. In a letter from Syracuse, New York, he expressed his present anxiety: —

"Permit me to say a word as to your personal safety. There are many of our best men who think more of that than you do. No man living that Treason would so much rejoice to see struck down as yourself; and many there are who would strike, if they dared. I know you think little of danger; but fear for your country, if not for yourself. Do not keep your room alone, night or day. Seldom or never go out after nightfall, and let your painful experience and the character of the foe teach you to be ever on guard."

[1] *Ante*, p. 4.

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DIPLOMATIC RELATIONS WITH THE REPUBLIC OF DOMINICA.

BILL IN THE SENATE, FEBRUARY 6, 1866.

DOMINICA was a colored government, occupying part of the island of Hayti.

In pursuance of a message from President Johnson, Mr. Sumner, from the Committee on Foreign Relations, reported the following bill, which was read and passed to a second reading.

A BILL to authorize the President of the United States to appoint a diplomatic representative to the Republic of Dominica.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint a diplomatic representative of the United States to the Republic of Dominica, who shall be accredited as Commissioner and Consul General, and shall receive the compensation of a Commissioner, according to the Act of Congress approved August eighteenth, eighteen hundred and fifty-six.

The object of this bill was accomplished by specific appropriation in the Consular and Diplomatic Bill.[1]

[1] Statutes at Large, Vol. XIV. pp. 225, 226.

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PROTECTION OF CIVIL RIGHTS.

Remarks in the Senate, February 9, 1866.

January 5, 1866, Mr. Trumbull, of Illinois, introduced "a bill to protect all persons in the United States in their civil rights, and furnish the means of their vindication," which was referred to the Judiciary Committee, of which he was Chairman. By this bill all courts, National and State, were opened to colored persons as parties and witnesses as to white citizens, and they were subject to like punishments. January 11th, he reported it to the Senate with amendments, and the next day the Senate proceeded to its consideration. The amendments were adopted, when, on motion of Mr. Trumbull, it was postponed. January 25th, its consideration was resumed, and continued until February 2d, when it passed the Senate, — Yeas 33, Nays 12.

March 13th, the bill passed the House of Representatives, with amendments, — Yeas 111, Nays 38. The Senate promptly concurred in the House amendments.

March 27th, President Johnson returned the bill to the Senate with his objections.

April 6th, after debate of several days, the bill passed the Senate again, notwithstanding the veto of the President, two thirds agreeing, — Yeas 33, Nays 15.

April 9th, it passed the House again, notwithstanding the veto of the President, two thirds agreeing, — Yeas 122, Nays 41.

Mr. Sumner, on the first day of the session, had introduced a "Bill supplying appropriate legislation to enforce the Amendment to the Constitution prohibiting Slavery."[1] He had also succeeded at an earlier day in opening the courts of the District of Columbia,[2] and then the courts of the United States, to colored testimony.[3] The bill

[1] *Ante*, p. 2.
[2] *Ante*, Vol. VI. pp. 442, seqq.
[3] *Ante*, Vol. IX. pp. 39, seqq.

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of Mr. Trumbull was introduced after consultation with Mr. Sumner, who watched its progress with absorbing interest, not doubting that it would be a precedent for a similar bill securing political rights. That the latter were embraced in civil rights was ably stated by Mr. Bingham, of Ohio, in the House of Representatives, while the Civil Rights Bill was under discussion.

"A distinction is taken, I know very well, in modern times, between civil and political rights. I submit with all respect that the term 'political rights' is only a limitation of the term 'civil rights,' and by general acceptation signifies that class of civil rights which are more directly exercised by the citizen in connection with the government of his country. If this be so, are not political rights all embraced in the term 'civil rights,' and must it not of necessity be so interpreted? Blackstone, whose Commentaries on the Common Law are so exact in definition, uses in that classic of the law the terms 'civil liberty' and 'political liberty' everywhere as synonymous. It never occurred to him that there was a colorable distinction between them." [1]

Another point equally clear to Mr. Sumner was, that a bill to secure equal rights at the ballot-box was "appropriate legislation" in enforcement of the Constitutional Amendment abolishing Slavery, just as much as the Civil Rights Bill. If the latter was constitutional, so also was the former. This appears in the speech of February 5th and 6th, and also in that of March 7th. But he took care to present it briefly in the debate on the Constitutional Amendment.

February 9th, interrupting Mr. Reverdy Johnson, of Maryland, with his permission, Mr. Sumner, after reading the operative words of the Civil Rights Bill, which had already passed the Senate and was then pending in the House, said: —

AS I understand it, this bill, which, as the Senator will see, actually annuls all State laws, everywhere throughout the United States, fixing any inequality in civil rights, is founded upon the second clause of the recent Amendment to the Constitution abolishing Slavery. Now the point to which I ask the attention of the Senator, before he passes from this branch of the discussion, is, whether, if we can annul

[1] Congressional Globe, 39th Cong. 1st Sess., p. 1291, March 9, 1866.

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all State laws declaring inequality in civil rights, we cannot also annul all State laws declaring inequality in political rights? whether, if this bill is constitutional, as I believe it is, such a bill as I propose would not also be constitutional? And in this connection I call attention to the famous judgment of Chief Justice Marshall, which the Senator remembers so well, in the case of *M'Culloch* v. *The State of Maryland*,[1] where the Chief Justice distinctly announces, having the point before him, that it is within the power of Congress to select its means, provided the means are appropriate to the end, and it is not for the Supreme Court, or any other branch of the Government, to sit in judgment on the means Congress chose to select. Therefore, if Congress now think, that, to enforce the abolition of Slavery, it is necessary, in the first place, to annul all inequality of civil rights, and, in the second place, to annul all inequality of political rights, I ask the Senator whether the latter proposition can be called in question? — whether an Act of Congress annulling all State laws declaring inequality of political rights is not absolutely constitutional, being "appropriate legislation" to enforce the Constitutional Amendment?

Mr. Johnson replied, that he had stated more than once that the bill on which Mr. Sumner "now relies is unconstitutional," and then said: —

"But even supposing it to be within the power of Congress to pass a law of that kind, it by no means follows that I think it has power to pass a law placing all the inhabitants of the States on the same political ground."

Later in his speech Mr. Sumner interrupted Mr. Johnson again, with his permission: —

[1] 4 Wheaton, R., 316.

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My argument is, that, if, to carry out the prohibition of Slavery, and to complete the duty of Abolition, it shall be regarded necessary to confer the franchise, it is within the power of Congress so to do. And now I ask my honorable friend to give the Senate the benefit of his opinion on this precise point. If Congress, under the Constitutional Amendment, can secure equality of civil rights, may it not, *a fortiori*, secure equality in political rights, under the same clause? I do not ask the Senator whether in his opinion it may under that clause confer equality in civil rights. I assume that it can, and the Senator knows well that the Senate has acted accordingly. Senators all about me assume that power; and now I ask the Senator, as a Constitutional lawyer to whom we refer daily, whether, if you can do the one, you cannot do the other?

Mr. Johnson replied at once: "I answer that in the negative very decidedly, and have only time to give a few reasons for it."

The following remarks, sketched for a speech on the veto of the Civil Rights Bill, and not delivered, are presented here in illustration of opinion at that time.

If I have not taken part in this debate, it is not from lack of interest in the question, but because on other occasions I have expressed my views on our duty to maintain the freedmen in their rights, civil and political, and since the cause, in the hands of the able Chairman of the Judiciary Committee [Mr. Trumbull], needed no assistance from me. I cannot disguise my joy that a measure like that now pending should receive the support it does. This is an augury for the future. If I were disposed to despair on other questions, I should take heart, when I see how Senators,

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once lukewarm, indifferent, or perhaps hostile, now generously unite in securing protection to the freedman by Act of Congress.

But, Mr. President, I am unwilling that this debate should close without at least one remark applicable to the future. You are about to decree that colored persons shall enjoy the same civil rights as white persons, — in other words, that with regard to civil rights there shall be no distinction of color; and this you do under the Constitutional Amendment by which Congress is empowered to "enforce" the prohibition of Slavery by "appropriate legislation." Rightly you regard the present proposition as "appropriate legislation" to this end. It is so, unquestionably. But I should fail in frankness, if I did not give notice that at the proper time I shall insist that every reason, every argument, every consideration, by which you assert the power of Congress for the protection of colored persons in civil rights, is equally strong for their protection in political rights. There is no difference between the two cases. In each you legislate to the same end, — that the freedman may be maintained in that liberty so tardily accorded; and the legislation is just as appropriate in one case as in the other.

All this, Sir, I have seen from the beginning; but I have been unwilling to embarrass the present bill by any additional proposition. The protection of colored persons in their civil rights by Act of Congress will be a great event. It will be great in itself. It will be greater still because it establishes the power of Congress, without further Amendment of the Constitution, to protect colored persons in all their rights, including of course the elective franchise. The power

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is ample. I trust that you will not hesitate to exercise it.

. . . . .

The able and exhaustive argument of the Senator from Illinois [Mr. TRUMBULL] has rendered all minute discussion of the veto superfluous. He has taken it up paragraph by paragraph, and has shown how absolutely unfounded it is in reason or authority. And then again, when the Senator from Maryland [Mr. JOHNSON] attempted to vindicate it, he has most successfully quoted that Senator against himself. If argument could avail, the veto is already lost, even without a vote.

But there are considerations of a more general character, which I desire to present very briefly; for at this stage of the debate I cannot venture to trespass on your attention.

Sir, you do not forget the Dred Scott decision, pronounced just as Mr. Buchanan was coming into power, — fit decision to inaugurate such a Presidency. Take it all in all, that decision must always stand forth in bad eminence, as perhaps the most thoroughly perverse and reprehensible in judicial history. Whether regarded in the light of morals or politics or jurisprudence, or of juridical history, it was simply shocking. It was an insult to conscience, to reason, and to truth.

The essential element of this decision was, that persons "guilty of a skin not colored like our own" could not be citizens of the United States; and this postulate was sustained by that remarkable assertion, outrageously false in history, that at the adoption of the Constitution colored persons were regarded as having no rights which the white man was bound to respect, — when, in point of fact, at that time they enjoyed the right of citizens in

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several States of the Union, while in England, Scotland, France, and Holland, to say nothing of other countries, it had been solemnly declared that all men within their respective borders were free.

In the lapse of time this decision passed out of sight. It seemed to be dead. Blasted at once by an indignant public sentiment, it received a more formal condemnation on two separate occasions: first, when the Attorney General, in an elaborate opinion, declared that a colored person was a citizen of the United States;[1] and, secondly, when the Supreme Court of the United States admitted a colored person as a counsellor at its bar.[2] We all thought this decision dead, and the whole practice of the Government was altered accordingly. Passports were issued to colored persons as citizens, and licenses to enter into the country trade were awarded to colored persons as citizens. For the time being that ill-begotten decision was practically dead.

But now it is once more alive. Bursting the cerements of the grave, it again stalks into this Chamber to fright us from our propriety. Not now from the Supreme Court does it come, but from the President. That public opinion which did not hesitate to condemn the Supreme Court cannot hesitate now to condemn the President.

The veto does not undertake to declare precisely that colored persons are not citizens under the Constitution, but it forbids all legislation positively declaring this citizenship. It is the Dred Scott decision in a new draught. It is the same thing, only with a new shake

[1] Attorney-General Bates, On Citizenship, November 29, 1862: Opinions of Attorneys General, Vol. X. pp. 382, seqq.

[2] See, *ante*, Vol. IX. pp. 229, seqq.

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of the kaleidoscope. You cannot adopt this veto without practically overturning the recent practice of the Government, and setting aside that opinion of Attorney-General Bates which is one of the most illustrious acts in the Administration of President Lincoln. For myself, I have always regarded that production as of the first importance in our recent history. The future historian, as he records the events by which the Republic has been elevated, must dwell with pride upon that simple act, where a single officer of the Government did so much to fix the liberties of a race.

I have said that this veto revives the Dred Scott decision. It does more. It is bad to revive the worst decision in our history; but this veto practically sets aside one of the best decisions in our history. I refer to the case of *M'Culloch* v. *Bank of Maryland*, where our great magistrate, Chief Justice Marshall, expended all his marvellous talent in expounding the powers of Congress under the Constitution. In all the annals of the Supreme Court there is no decision more carefully considered or wrought with a finer skill. In this remarkable judgment it has been positively declared, that, where the Constitution confers upon Congress certain powers, it is within the discretion of Congress to determine when and how they shall be exercised. Here are the precise words: —

"The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select *any appropriate means*, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception. . . . . Let the end be legitimate,

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let it be within the scope of the Constitution, and *all means* which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."[1]

According to this authoritative text, Congress must determine the "means" it will employ in the exercise of its powers. But this veto pretends to despoil Congress of this discretion.

In the exercise of its discretion, Congress has undertaken to assure civil rights to colored persons. It has been moved to this especially in pursuance of the second clause of the Thirteenth Amendment, where it is empowered to enforce the prohibition of Slavery by appropriate legislation. The present bill is regarded as essential to enforce the prohibition of Slavery, and Congress, in the exercise of its discretion under the Constitution, has passed it. But the veto comes to arrest this discretion. So far as its influence goes, it will neutralize and nullify the great Amendment by which Slavery has been abolished. It leaves the letter in the Constitution, but it takes away the powers by which that letter is made a living soul.

I have said enough to condemn the veto. I have shown, first, that it revives a most odious judgment, and, secondly, that it subverts a received rule of interpretation, and degrades that Constitutional Amendment which is the glory of our recent history. But I go further.

. . . . . .

[1] 4 Wheaton, R., pp. 409–421.

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THE CITY OF BOSTON AND MR. SUMNER.

LETTER TO THE MAYOR OF BOSTON, IN ACKNOWLEDGMENT OF A RESOLUTION OF THE BOARD OF ALDERMEN, MARCH 5, 1866.

MARCH 2d, the Board of Aldermen of Boston adopted unanimously the following resolution, which was communicated to Mr. Sumner by the Mayor.

"*Resolved*, That we deem it fitting time to express our profound sense of the eminent loyalty, patriotism, and statesmanship of our distinguished Senator, Charles Sumner, — to acknowledge the measureless debt of gratitude which the Commonwealth and the nation owe him for his wise counsels and constant and efficient services in this great struggle to establish justice and to secure the prosperity of the Union, — and our indignant conviction of the utter falsehood of any accusation, no matter by whom made, which likens him, either in theory or practice, to the traitor chiefs of the Rebellion, or which charges him with any lack of devotion or loyalty to that great cause of Freedom and Nationality which he has watched with such untiring vigilance and served with such masterly ability.

"*Resolved*, That a copy of this resolution be forwarded by his Honor the Mayor to Mr. Sumner."

This resolution was plainly aimed at President Johnson on account of his speech of February 22d.[1]

In reply Mr. Sumner wrote: —

SENATE CHAMBER, March 5, 1866.

DEAR SIR, — I have been honored by your communication of March 2d, covering a resolution of the Board of Aldermen of the city of Boston, expressing in most flattering terms the good feelings of the Board toward me.

[1] *Ante*, p. 267.

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I have read with pride and gratification this emphatic token of confidence and regard. Coming as it does from the highest functionaries of the city where I was born, educated, and have always had my home, it has a value of its own. It is precious as the approbation of friends and neighbors.

While disclaiming all title to the praise so generously accorded for the services I have been able to render in the discharge of public duties, I have no hesitation in claiming for myself such credit as may come from early, faithful, and persistent devotion to the principles of Republican Government, and especially to those ideas which from the beginning have been the glory of Massachusetts. For these principles and these ideas I have labored, and I shall continue to labor so long as life lasts. If at any moment I could hesitate, your words would be an encouragement to constancy. And permit me to add, the result cannot be doubtful. Even through the present darkness it is plainly visible.

Please tender to the Board of Aldermen my best thanks for the honor they have done me, and believe me, Mr. Mayor, with much respect,

Your faithful fellow-citizen,

CHARLES SUMNER.

HON. F. W. LINCOLN, JR., Mayor, &c.

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POLITICAL EQUALITY WITHOUT DISTINCTION OF COLOR.

NO COMPROMISE OF HUMAN RIGHTS.

SECOND SPEECH IN THE SENATE ON THE PROPOSED AMENDMENT OF THE CONSTITUTION FIXING THE BASIS OF REPRESENTATION, MARCH 7, 1866.

THIS second speech was in continuation of the debate on the proposed Constitutional Amendment, and in reply to those who had spoken after Mr. Sumner, especially Mr. Fessenden. The history of the debate and its result appear in the Appendix to the speech of February 5th and 6th.[1]

MR. PRESIDENT, — I hesitate to intrude again into this debate, which now, after the interposition of another debate on another question, is again renewed. I do it with unfeigned reluctance, and I hope not to trespass too much on your patience.

The question before us, even in its simplest form, is of incalculable importance; but it has added interest, as opening the whole vast subject of Reconstruction. Into this field I shall not be tempted, except to express a brief opinion on the general principles we should seek to establish. Treason must be made odious, and to this end power should be secured to loyal fellow-

[1] *Ante*, pp. 288, seqq.

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citizens. In doing this, two indispensable conditions cannot be forgotten: first, all who have been untrue to the Republic must, for a certain time, constituting the *transition period*, be excluded from the partnership of government; and, secondly, all who have been true to the Republic must be admitted into the partnership of government, according to the sovereign rule of the Constitution, which knows no distinction of color. Following these two simple commandments, there will be safety and peace, together with power and renown; neglecting these two simple commandments, there must be peril and distraction, together with imbecility and dishonor. In the one way, Reconstruction is easy; in the other way, it is in any just sense impossible. It may seem for the moment to succeed; but it must fail in the end. This is all I have to say at present on Reconstruction, and I turn at once to the precise question before us.

Pardon me, Sir, if I remind you that there are two modes of debate. One is to attack the previous speaker with personality of criticism or manner. The other is to speak plainly on the question, and to deal directly, according to your convictions, with the principles involved. Sometimes the two modes are allowed to intermingle. If ever there was occasion when the first should be carefully avoided, when the question alone should be handled, and not the previous speaker, when attention should be directed exclusively to principles involved, and not to any subordinate point of mere form, it is now, when we are asked to insert a new provision in the Constitution, fixing the basis of political power at the expense of fellow-citizens counted by

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millions. In this spirit I shall try to speak. To my mind, the occasion is too solemn for personal controversy, and I shall not be drawn into it.

The proposition before you is the most important ever brought into Congress, unless, perhaps, we except the Amendment abolishing Slavery; and to my mind it is the most reprehensible. The sentiment which inspired us to hail the abolition of Slavery with gratitude, as the triumph of justice, should make us reject with indignation a device to crystallize into organic law the disfranchisement of a race. With intense regret I differ from valued friends about me, but I cannot do otherwise. I bespeak in advance their candor, and most cheerfully concede to all from whom I differ the indulgence which I claim for myself. With me there is no alternative. Seeing this proposition as I do, I must speak frankly, as on other occasions, in exposing the crime against Kansas, or the infamy of that enactment which turned the whole North into a hunting-ground where man was the game. The attempt now is on a larger scale, if not more essentially bad. Such a measure, so obnoxious to every argument of reason, justice, and feeling, so perilous to the national peace, and so injurious to the good name of the Republic, must be encountered as a public enemy. There is no language which can adequately depict its character. Thinking of it, I am reminded of words of Chatham, where he held up to undying judgment a barbarous measure of the British Ministry. The Englishman did not hesitate, nor did he tame his words, but exclaimed: —

"I am astonished, shocked, to hear such principles confessed, — to hear them avowed in this House, or in this coun-

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try, — principles equally unconstitutional, inhuman, and unchristian. . . . . I call upon your Lordships and the united powers of the State to stamp upon them an indelible stigma of the public abhorrence."

Then, rising to still higher flight, he cried out: —

"My Lords, I am old and weak, and at present unable to say more; but my feelings and indignation were too strong to have said less. I could not have slept this night in my bed, nor reposed my head on my pillow, without giving this vent to my eternal abhorrence of such preposterous and enormous principles."[1]

But what was the measure which thus aroused the veteran orator, compared with that before us? It was only a transient act of wrong, small in proportions. Here is an act of wrong permanent in influence, colossal in proportions, operating in an extensive region, affecting millions of citizens, positively endangering the peace of the country, and covering its name with dishonor. Such is the character of the present attempt. I exhibit it as I see it. Others may not see it so. Of course, its supporters cannot see it so. The British Ministry did not see the measure which Chatham denounced as he saw it, and as history now sees it. Senators would not support the present proposition, if they thought it disgraceful; nor would the British Ministry have supported that earlier proposition, had they thought it disgraceful. Unhappily, they did not think it so; but I trust you will be warned by their example.

With the eloquence of Chatham, another also from his place in the House of Lords held up to reprobation that apprentice system which, under the sanction

[1] Speech on the Employment of Indians in the American War, November 20, 1777: Hansard's Parliamentary History, Vol. XIX. col. 368 - 370.

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of both Houses of Parliament, followed Emancipation in the British West Indies. I refer to Brougham. He did not hesitate to exclaim, "Prodigious, portentous injustice!" And then, continuing, he denounced it as "the gross, the foul, the outrageous, the monstrous, the incredible injustice of which we are daily and hourly guilty towards the whole of the ill-fated African race."[1] But how small the injustice which aroused his reprobation, compared with that you are asked to perpetuate in Constitutional Law! The wrong he arraigned was against eight hundred thousand persons in distant islands, to whom the people of Great Britain were bound by no peculiar ties, and who were to them only fellow-men. The wrong I now arraign is against four million persons, constituting a considerable portion of the "people" of the United States, to whom we are bound by ties of gratitude, and who are to us fellow-citizens.

From the moment I heard this proposition first read at the desk I have not been able to think of it without pain. The reflection that it may find place in the National Constitution, or even that it may be sanctioned by Congress, is intolerable. And this becomes more so, when I call to mind the circumstances by which we are surrounded and the exigency of the hour.

Lord Bacon tells us that the highest function which men can be called to perform on earth is that of founders of states, or, as he expresses it, *conditores imperiorum*.[2] Such is our present duty. We are to help in this great work by a fundamental provision fixing the

[1] Speech on Negro Emancipation, February 20, 1838: Hansard's Parliamentary Debates, 3d Ser. Vol. XL. col. 1307, 1308.

[2] Essays: Of Honor and Reputation.

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basis of our political system for an indefinite future. There are none among the great lawgivers of history who have had a sublimer task.

This duty is enhanced, when we consider that it is the consequence and sequel of an unparalleled war. At a moment of peace such a duty would be commanding; but it is now reinforced by exceptional considerations arising from the exceptional condition of affairs. For four years, Rebellion, of the greatest magnitude known to authentic history, raged among us, threatening to rend the Republic in twain. Millions of treasure were sacrificed. Lives more precious than any treasure were heaped in hecatombs. Families were filled with mourning. In the terrible struggle, while the country was bleeding at every pore and the scales of battle hung doubtful, assistance came from an unexpected quarter. Intermixed with the false men who warred on the Republic were nearly four million slaves, shut out from rights of all kinds, and compelled to do the bidding of masters. These slaves became our benefactors. They were kind to our captive soldiers, sheltering them, feeding them, supplying their wants, and guiding them to safety. Thus in the very heart of the Rebellion there was a filial throb for the Republic. At last arms were put into their hands, and two hundred thousand brave allies, representatives of an unmustered host, leaped forward in defence of the national cause. The Republic was saved. The Rebellion was at an end. Meanwhile the good President who at that time guided our affairs put forth his immortal Proclamation, declaring that these slaves "are and henceforward shall be free"; and not stopping with this declaration, he proceeded to announce that "the Execu-

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tive Government of the United States, including the military and naval authorities thereof, will recognize and *maintain* the freedom of said persons." Thus was the Republic solemnly pledged to these benefactors, first, by ties of gratitude that should be enduring, and, secondly, by an open promise in the face of the civilized world. And this pledge was taken up and adopted by the people of the United States, when, by Constitutional Amendment, they expressly empowered Congress to maintain this freedom by appropriate legislation.

And now, Sir, called to readjust the foundations of political power, which are naturally changed by the disappearance of Slavery, and called also to perform sacred promises to benefactors, in harmony with sacred promises of our fathers, while at the same time we save the name of the Republic from dishonor and see that the national peace is not imperilled, Congress is about to liquidate all these inviolable obligations by a new compromise of Human Rights, and, so far as it can, to place this compromise in the text of the Constitution, thus establishing a false foundation of political power, violating the national faith, dishonoring the name of Republic, and imperilling the national peace. Others have dwelt on the inadequacy of this attempt, even for its avowed purposes. This is plain. Conceived in a desire to do indirectly what ought to be done directly, it must naturally share the conditions of such a device.

Looking at the proposition in its most general aspect, it reminds me, if you will pardon the illustration, of that leg of mutton, served for dinner on the road from London to Oxford, which Dr. Johnson, with characteristic pungency, described "as bad as bad could be,

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— ill-fed, ill-killed, ill-kept, and ill-dressed."[1] So this measure — I adopt the saying of an eminent friend, who insists that it cannot be called an "amendment," but rather a "detriment," to the Constitution — is as bad as bad can be; and even for its avowed purpose uncertain, loose, cracked, and rickety. *Regarding it as a proposition from Congress to meet the unparalleled exigencies of the hour*, it is no better than the "muscipular abortion" sent into the world by the "parturient mountain."[2] But only when we look at the chance of good is it "muscipular." In every other aspect it is gigantic, inasmuch as it makes the Constitution a well-spring of insupportable thraldom, and once more lifts the sluices of blood destined to run until it rises to the horse's bridle. Adopt it, and you put millions of fellow-citizens under the ban of excommunication, you hand them over to a new anathema maranatha, you declare that they have no *political* rights "which the white man is bound to respect," — thus repeating in new form the abomination that has blackened the name of Taney. Adopt it, and you stimulate anew the war of race upon race. Slavery itself was a war of race upon race, and this is only a new form of the terrible war. The proposition is as hardy as gigantic; for it takes no account of the moral sense of mankind, which is the same as if in rearing a monument we took no account of the law of gravitation. It is the paragon and master-piece of ingratitude, showing more than any other act of history what is so often charged and we so fondly deny, that republics are ungrateful. The freedmen ask for

[1] Boswell's Life of Johnson, ed. Croker, (London, 1853,) Vol. VIII. p. 285, June 3, 1784.

[2] "Parturient mountains have ere now produced muscipular abortions." — *Johnson's Ghost*: Rejected Addresses.

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bread, and you send them a stone. With piteous voice they ask for protection; you thrust them back defenceless into the cruel den of former masters. Such an attempt, thus bad as bad can be, thus abortive for all good, thus perilous, thus pregnant with a war of race upon race, thus shocking to the moral sense, and thus treacherous to those whom we are bound to protect, cannot be otherwise than shameful.

I shall not content myself with describing the device. This is not enough. You have seen it in its general character only. You shall see it now in its guilty parts, each one of which is sufficient to arouse the conscienee against it.

1. Of course you cannot fail to be struck by its language. Here words become things. In express terms there is *admission of the idea of Inequality of Rights founded on race or color.* That this unrepublican idea should be allowed to find place in the text of the Constitution must excite especial wonder, when it is considered how conscientiously our fathers excluded from that text the kindred idea of property in man. The saying of Mr. Madison cannot be too often repeated: —

"He thought it *wrong* to admit in the Constitution the idea that there could be property in men."[1]

But is it less wrong to admit in the Constitution the idea of Inequality of Rights founded on race or color? Surely the authors of this proposition have acted inconsiderately and with little regard to the spirit of the Fathers. Imagine it introduced into the Convention

[1] Debates in the Federal Convention, August 25, 1787: Madison Papers, Vol. III. pp. 1429, 1430.

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which framed the Constitution. Not many words would have been used; but evidently it would have found no place in that text, which, with pious care, was to be guarded against degradation. And now mark the change. After the lapse of generations, when our obligations have increased with increasing light, at an epoch of history when mankind are more than ever before sensitive to the claims of human rights, and when among ourselves there is more than ever before a desire and a duty to fulfil all the promises of the Declaration of Independence, we are invited to make the Constitution disown the Declaration of Independence, insult the conscience of mankind, and disregard all the obligations pressing upon us. But this is a mild way of stating the character of the attempt plainly apparent in the words. Its essential uncleanness is not disclosed. Adopt this proposition, and you will imitate those ancient birds who defiled the feast that was spread. The Constitution is the feast spread for our country, and you hurry to drop into its text a political obscenity, and to diffuse over its page a disgusting ordure, —

"Defiling all you find,
And parting leave a loathsome stench behind." [1]

Only by plain language can this attempt be adequately exposed. Only in this way can it be seen in its true character. Only in this way can you be moved to shrink from it with proper repugnance. In this spirit the religious press of the country is beginning to speak. The Boston "Recorder," the most venerable of all the religious papers of New England, and perhaps of the whole country, which for more than half a century

[1] Æneid, tr. Dryden, Book III. 295, 296 [227, 228].

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has been a weekly teacher at uncounted firesides, thus solemnly appeals to the conscience of patriots and of statesmen : —

"The proposed Amendment to the Constitution of the United States, which passed the House of Representatives last week by a vote of 120 to 46, will, if it should become the fundamental law of the land, *inflict upon our free institutions greater infamy than anything contained in our written Constitution.* There are things there which were sufficiently disgraceful in their intent and purpose. That the slave-trade should not be prohibited before 1808, that three fifths of the slaves should be represented in Congress by the votes of their owners, that fugitive slaves should be returned to their owners, — these were scandalous provisions to which our noble fathers submitted only because without them we could have no common national existence. But they couched these offensive propositions in terms that, on the cessation of Slavery, would have no objectionable meaning. This event they anticipated much earlier than it has actually occurred. And now that it is a fact, no one wishes the clauses of the Constitution to which we have alluded to be stricken out.

"But now it is proposed to ingraft upon this revered instrument a principle implying that a State may decree that all men are not born equal, and may disfranchise a majority of her citizens and their sons and their sons' sons forever! Good jurists have declared that the Constitution, as it now stands, would forbid any such State action, and that all constitutions and laws disfranchising citizens because of their parentage, color, race, or descent, are null and void. . . . . We are not aware of any attempt to refute this view with a shadow of success.

"And now it cannot be that we shall give up our vantage-ground, *and stain the triumph* bought with so much precious

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blood with *a concession which might be turned to so base a use.*

"Let every patriot, to whom the good name of America is dear, bestir himself. Let every Christian who believes that God is no respecter of persons, let every father who would not leave to his children a legacy of national discord and a birthright in a nation yet to bleed in Helot conspiracies, let every statesman who believes that even justice is the only sure foundation of national tranquillity, arouse himself."[1]

I have heard somewhere a strange apology for this amendment. It is said that it is "punitive," and that the idea of Inequality of Rights is to be admitted into the Constitution for punishment, and not for sanction. As well say that the term "three fifths of all other persons" in the Constitution was "punitive." It was no such thing. It was a compromise; and such is the precise character of the present attempt, which, by its very words, is a plain license to tyranny, in consideration that the tyrants pay in political power. The primary element, standing out in "darkness visible," is the license; the secondary element is the pay. Here is nothing less than a mighty house that shall be nameless, which it is proposed to license constitutionally for a consideration. Even if political power is curtailed, it is only as a consideration for the license. It is a new sale of "indulgences," on a larger scale than that of Tetzel. The latter, returning from Rome into Germany, became vendor of licenses for adultery, robbery, theft; but the outrage aroused Martin Luther, and the Reformation began. As well say, that, since pay was required, therefore the indulgences of Tetzel were "punitive."

[1] Boston Recorder, February 9, 1866.

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Thus far I have spoken of the attempt only as it appears in its words, without analyzing it in detail.

2. One of its elementary parts and consequences is that *it sanctions the acknowledged tyranny of taxation without representation.* A whole race, constituting a considerable part of the people of the United States, and embraced under the words of the preamble to the Constitution, "We the people," are left without representation in the Government, but nevertheless held within the grasp of taxation, direct and indirect, tariff and excise, State and National. Sir, this is tyranny, — or else our fathers were wrong, when they protested against a kindred injustice. The principle is fundamental. You cannot violate it without again dishonoring the Fathers.

To the application of this principle there have been two replies: first, that in its origin it was a claim of representation for communities only, and not for individuals; and, secondly, that in its nature it embraces women as well as men. And from these two considerations it is argued that it cannot be invoked for the protection of four million people whose only offence is a dark skin. Even if it had been originally a claim for communities only, and not for individuals, it is difficult to see how it can be rejected as a rule in determining the rights of fellow-citizens counted by millions. Our fathers, when they cried out that taxation without representation is tyranny, were not more than two millions and a half. Our fellow-citizens now renewing the same cry are more than four millions, possessing the weight of numbers, if not of organization. But it is a mistake to suppose that the original claim was for communities

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only, and not for individuals. This is a question of history, to be considered with the gravity of history, and as such I ask attention to it.

In opening this debate, I carried you to that Provincial Court in Massachusetts, where, in assailing Writs of Assistance, James Otis first launched the thunderbolt, "Taxation without representation is tyranny." You remember how careful he was to insist that without representation there could be no taxation of any kind, direct or indirect, on land or on trade, and that the representation must be substantial, real, and not merely imaginary, or, as it was expressed at that time, "virtual." In developing this principle, he announced the equal rights of all, without distinction of color. On this ground he stood, when he uttered those memorable words, which the whole country adopted at once with patriotic frenzy, and which I insist you shall not deny in our organic law.

But, to show more precisely the meaning of Otis, I let him be his own interpreter. Again and again he asserts the equality of men. This was his fundamental principle, which on an important occasion he thus expressed: "The first simple principle is equality and the power of the whole."[1] Nor did he allow this to be limited in application by any distinction of color. John Adams, who was present when the orator first raised his great cry, says: "Nor were the poor negroes forgotten. Not a Quaker in Philadelphia, or Mr. Jefferson, of Virginia, ever asserted the rights of negroes in stronger terms."[2] Otis, in another form, assailed directly the distinction of color, saying: "Will short,

[1] Rights of the British Colonies Asserted and Proved (Boston, 1764), p. 14.
[2] Letter to William Tudor, June 1, 1818: Works, Vol. X. p. 315.

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curled hair, like wool, instead of Christian hair, as 't is called by those whose hearts are as hard as the nether millstone, help the argument?"[1] Such, then, were his premises, — the equal rights of all, without distinction of color. From these his conclusion was easy: —

"The very act of taxing, exercised over those who are not represented, appears to me to be depriving them of one of their most essential rights as freemen, and, *if continued, seems to be, in effect, an entire disfranchisement of every civil right.* For what one civil right is worth a rush, after a man's property is subject to be taken from him at pleasure, without his consent? If a man is not *his own assessor*, in person or by deputy, his liberty is gone, or lays entirely at the mercy of others."[2]

Stronger words for universal suffrage could not be employed. His argument is, that, if men are taxed without being represented, they are deprived of essential rights, and the continuance of this deprivation despoils them of every civil right, — thus making the latter depend upon the right of suffrage, which by curious neologism is known as political instead of civil. Then, giving point to his argument, the patriot insists, that, in determining taxation, "a man must be his own *assessor*, in person or by deputy," without which his liberty is entirely at the mercy of others. Here, again, in different form, is the original thunderbolt; and the claim is made not merely for communities, but for "a man."

Such a principle naturally encountered opposition at that time, even as now in this Chamber; but Otis was ready at all points To the argument, that Manchester, Birmingham, and Sheffield, like America, returned no members to Parliament, he flashed forth in reply: —

[1] Rights of the British Colonies, p. 29. [2] Ibid., p. 38.

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"If they are not represented, they ought to be. *Every man of a sound mind should have his vote.*"

And then again, taking up the reply, he exclaimed:—

"Lord Coke declares that it is against Magna Charta, and against the franchises of the land, for freemen to be taxed but by their own consent."[1]

Thus does he interpret again the flaming words, "Taxation without representation is tyranny."

But, while thus positive, there is reason to believe that Otis so far yielded to prevailing sentiment, and especially to the opinions of Harrington, whose "Oceana" was much read at that time, as sometimes to recognize property in determining the basis of political power. On one occasion he said that Government could not be "rightfully founded on property alone," thus seeming to intimate that property might enter into the foundation, although, as he derisively remarks, "the possessor of it may not have much more wit than a mole or a musquash."[2] But it was doubtless obvious to his clear intelligence that a claim of power founded on property was very different from a claim of power founded on color. Property may be acquired; but color, from its nature, is an insurmountable condition. The original Constitution of Massachusetts recognized property as an element of political power; but it rejected all discrimination founded on color. If, therefore, under the maxim of Otis, there may be discrimination founded on property, most clearly, according to reason and early practice, there can be none founded on color; so that at the present hour his maxim is of vital force as a claim, not

[1] Hutchinson's Correspondence, quoted by Bancroft, History of the United States, Vol. V. pp. 290, 291.

[2] Rights of the British Colonies, p. 8.

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merely for the community, but for the individual. Let the country now, as aforetime, take it up and repeat it until it becomes the watchword of patriotism.

But Otis was not the only interpreter of this maxim of Liberty. The Legislature of Massachusetts, on repeated occasions, made the same claim. In solemn resolutions, drawn by Samuel Adams, and adopted unanimously, it declared, in substance, that, "by the Law of Nature, no man has a right to impose laws more than to levy taxes upon another"; that "the freeman pays no tax, as the freeman submits to no law, but such as emanates from the body in which he is represented."[1] Surely this claim is not merely for the community, but for the individual freeman also.

Virginia was not behind Massachusetts. In her Declaration of Rights, drawn by that determined patriot, George Mason, and adopted June 12, 1776, anterior to the Declaration of Independence, is the following emphatic claim: —

"All men having sufficient evidence of permanent common interest with and attachment to the community *have the right of suffrage, and cannot be taxed or deprived of their property for public uses without their own consent* or that of their representatives so elected, nor bound by any law to which they have not in like manner assented for the public good."[2]

Here again the claim is not merely for the community, but for "all men," and it is set forth thus positively in a Declaration of Rights.

And now listen to Benjamin Franklin. I quote a statement found among his papers, and placed by his

[1] Life of John Adams, by C. F. Adams: Works, Vol. I. p. 78.
[2] Hening, Statutes at Large, Vol. IX. p. 110.

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excellent editor under date of 1768–9, while the Colonists were echoing the cry, "Taxation without representation is tyranny."

"That *every man* of the commonalty, excepting infants, insane persons, and criminals, is of common right, and by the laws of God, a freeman, and entitled to the free enjoyment of liberty.

"*That liberty or freedom consists in having an actual share in the appointment of those who frame the laws*, and who are to be the guardians of every man's life, property, and peace; for the *all* of one man is as dear to him as the *all* of another, and the poor man has an *equal* right, but *more* need, to have representatives in the Legislature than the rich one.

"That they who have no voice nor vote in the electing of representatives *do not enjoy liberty, but are absolutely enslaved to those who have votes and to their representatives*; for to be enslaved is to have governors whom *other men have set over us*, and be subject to laws *made by the representatives of others*, without having had representatives of our own to give consent in our behalf."[1]

Here is no claim for communities merely, but expressly for "every man," including especially "the poor man," and without distinction of color.

This American testimony is fitly crowned by the Declaration of Independence, which, beginning with the proclamation that "all men are created equal," proceeds to assert that governments "derive their just powers from the consent of the governed." Here again is no claim for communities, but for "all men"; and this is the most authoritative interpretation of the original claim thundered forth by Otis, and echoed throughout the land. It is idle to show that in certain in-

[1] Some Good Whig Principles: Works, ed. Sparks, Vol. II. p. 372.

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stances the Fathers failed to apply the sublime principles they declared. Their failure can be no apology for us, on whom the duty is now cast.

But there is still another interpreter. The maxim of Otis was not original with him. It is found in the writings of John Locke, so remarkable for masculine sense and an exalted love of liberty. On a former occasion I adduced his authority, which is plain and positive. Pardon me, if I call attention to it once more. After asserting that Government cannot take the property of any one without his own consent, being the consent of the majority, the philosopher thus expresses himself: —

"For, if any one shall claim a power to lay and levy taxes on the people by his own authority *and without such consent of the people*, he thereby invades the fundamental law of property and subverts the end of government; for what property have I in that which another may by right take, when he pleases, to himself?"[1]

Mr. Hallam, commenting on this text, does not hesitate to say, that it "in some measure seems to charge with usurpation all the established governments of Europe," — that "neither the Revolution of 1688 nor the administration of William the Third could have borne the test by which Locke has tried the legitimacy of government."[2]

A later English writer, Mr. Tremenheere, commenting also on this text, sets forth its two propositions as follows: "First, that a political society can only be bound

[1] Two Treatises of Government: Of Civil Government, Book II. ch. 11, § 140: Works (London, 1812), Vol. V. p. 423.

[2] Introduction to the Literature of Europe (London, 1847), Vol. III. pp. 445, 448, Part IV. ch. 4, §§ 95, 100.

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by the act of the majority; second, that taxation without representation is tyranny."[1] Such are the two propositions this English writer finds in Locke, and which he cites for condemnation. Thus, if we repair with Otis to the very source from which he drew, we find that there was no claim for communities merely, but for the individual man, without distinction of color.

Mr. Bright, our English friend, in one of his admirable speeches,[2] has recently furnished an additional illustration. He has brought to light a resolution from no less an authority than Lord Somers, on an important occasion, kindred to the present, when it was proposed to disfranchise all who were not of the Established Church, as it is now proposed to disfranchise all who are not of a certain color. Speaking for the House of Lords, in conference with the Commons, this great constitutional lawyer insisted: —

"That though the Lords allow that no man hath a place by birthright, or but few such examples in our Government, yet that *giving a vote for a Representative in Parliament is the essential privilege whereby every Englishman preserves his property*, and that whatsoever deprives him of such vote deprives him of his birthright."[3]

Here again is the very cry of Otis; and you cannot fail to observe that the claim is not for communities merely, but for "every Englishman," without distinction of color.

[1] Political Experience of the Ancients, p. 129.

[2] Addressed to his constituents, and appearing in the newspapers. See also a later speech, in the House of Commons, March 13, 1866: Hansard's Parliamentary Debates, 3d Ser., Vol. CLXXXII. col. 223.

[3] Free Conference on the Bill of Occasional Conformity, December 16, 1702: Chandler's History and Proceedings of the House of Commons, Vol. III. p. 229; Hansard's Parliamentary History, Vol. VI. col. 80.

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Surely this is enough. But it is said that the claim is as applicable to women as to men, especially where women are tax-payers. To this I reply, that Locke, Somers, Otis, and Franklin, in making the claim, did not give it any such extent, and the question which I submit is simply as to their meaning in the words "Taxation without representation is tyranny." Clearly their claim was for *men*, believing, as they did, that *women* were represented through men; and it is hardly candid to embarrass the present debate, involving the rights of an oppressed race, by another question entirely independent. In saying that the claim was for men, I content myself with the authority of Theophilus Parsons, afterward the eminent Chief Justice of Massachusetts, who, in a masterly state-paper, known as the "Essex Result," which was the prelude to the Constitution of Massachusetts, thus discloses the opinion of the Fathers on this precise point:—

"Every freeman, who hath sufficient discretion, should have a voice in the election of his legislators. . . . . All the members of the State are qualified to make the election, unless they have not sufficient discretion, or are so situated as to have no wills of their own. Persons not twenty-one years old are deemed of the former class, from their want of years and experience. . . . . Women, what age soever they are of, are also considered as not having a sufficient acquired discretion, — not from a deficiency in their mental powers, but from the natural tenderness and delicacy of their minds, their retired mode of life, and various domestic duties. These, concurring, prevent that promiscuous intercourse with the world which is necessary to qualify them for electors. Slaves are of the latter class, and have no wills."[1]

[1] Memoirs of Theophilus Parsons by his Son, Appendix, pp. 375, 376.

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The reasons assigned for the exclusion of women may be very unsatisfactory; but they show at least that the Fathers, when insisting that taxation and representation must go together, did not regard women, any more than minors, within the sphere of this commanding principle. And here I leave this head of the argument, concluding as I began, that you cannot adopt this pretended Amendment without setting at defiance the great maxim of constitutional liberty which was the rallying cry of our fathers.

3. Continuing the dissection, I exhibit this proposition as a new form of *concession to State Rights.* Such it is plainly on its face; such it is in reality; and the more you examine it, the more complete the concession appears. Already it has been announced as such by those who seek to commend it in quarters of doubtful loyalty. Here, for instance, is a speech of Hon. John E. King, claimant of a seat in Congress from Louisiana, only a few days ago addressed to the Legislature of his State, where, after calling attention to the present attempt, he exults in what seemed to him the prospect of its adoption: —

"The present Congress is proceeding to amend without the eleven States that are unrepresented in that body. *However, there is some good in all this evil.* If this Amendment should pass, — and the speaker said that himself and colleagues had no doubt that it would, — it will settle forever the right of the States to legislate, each for itself, as to who shall be the voters therein."[1]

Thus, while deprecating Amendments to the Constitution in the absence of the eleven Rebel States, the

[1] New Orleans Delta, February 18, 1866.

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partisan of State Rights is reconciled to the pending proposition, inasmuch as it is a triumph of this sectional pretension. Alas, that now, at the close of a rebellion in the name of State Rights, we should be considering calmly how to assure this pernicious heresy new support in the Constitution itself!

Let me be understood. I suggest no interference with the just rights of the States. These belong to the harmonies of the Union. But, in the name of Justice, I insist that nothing further shall be done to invest the States with peculiar local power. If not taught by the lessons of the late war, then be taught by the principles avowed at the very beginning of the Government.

The object of the Constitution was to ordain, under authority of the people, a national government possessing unity and power. The Confederation had been merely an agreement "between the States," styled "a league of firm friendship." Found to be feeble and inoperative, through the pretension of State Rights, it gave way to the Constitution, which, instead of a "league," created a "Union" in the name of the people of the United States. Beginning with these inspiring and enacting words, "We, the people," it was popular and national. Here was no concession to State Rights, but a recognition of the power of the people, from whom the Constitution proceeded. The States are acknowledged; but they are all treated as component parts of the Union in which they are absorbed under the National Constitution, which is the supreme law. There is but one sovereignty, and that is the sovereignty of the people of the United States.

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On this very account the adoption of the Constitution was opposed by Patrick Henry and George Mason. The first pronounced: "That this is a consolidated government is demonstrably clear." "The question turns on that poor little thing, the expression, 'We, the people,' instead of 'the States' of America."[1] The second exclaimed: "Whether the Constitution be good or bad, the present clause ['We, the people'] clearly discovers that it is a national government, and no longer a confederation."[2] But against this powerful opposition the Constitution was adopted in the name of the people of the United States. Throughout the discussion, State Rights were treated with little favor. Madison said, the States were "only political societies," and "never possessed the essential rights of sovereignty."[3] Gerry said, the States had "only corporate rights."[4] Wilson, the philanthropic member from Pennsylvania, afterward a learned judge of the Supreme Court of the United States, and author of the "Lectures on Law," said: "Will a regard to State Rights justify the sacrifice of the Rights of Men? If we proceed on any other foundation than the last, our building will neither be solid nor lasting."[5] Such were the voices at that heroic day. And now, at the end of an unparalleled war to abase State Rights, we are asked to naturalize in the Constitution a new provision confirming to the States an odious pretension, shocking to the moral sense. But its character belongs to another head.

[1] Debates in the Virginia Convention, June 4 and 5, 1788: Elliot (2d edit.), Vol. III. pp. 22, 44.

[2] Ibid., June 4, 1788: Elliot, Vol. III. p. 29.

[3] Yates's Minutes of the Debates of the Federal Convention, June 29, 1787: Elliot, Vol. I. p. 461.

[4] Ibid., p. 464.

[5] Ibid., June 30, 1787, p. 467.

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4. Proceeding with the dissection, I now exhibit the proposition, not only as a concession to State Rights, which is admitted by a Louisiana supporter, but, if unhappily adopted, as the *constitutional recognition of an Oligarchy, Aristocracy, Caste, and Monopoly founded on color.* All this appears on the face; and as you examine it, the intolerable consequence becomes still more apparent. Thus far we have been saved from such shame. The proposition before us assumes that the elective franchise may be denied or abridged constitutionally on account of race or color, and thus sanctions the usurpation, — thereby investing those who deny or abridge it with exclusive political control, without regard to number, though they may be a minority or even a small fraction of the people. What, Sir, is this rancid pretension, if it be not an oligarchy, aristocracy, caste, and monopoly founded on color, under sanction of the Constitution? It is all these together, having beyond question the distinctive features of each and the distinctive discredit of each, — therefore odious in government, odious in religion, odious in economy, and altogether constituting an outrageous indecency.

It is idle to say that this is done already in the States. It may be done *in fact.* But now you propose to give this criminal fact the support of the Constitution, and lift it into perpetual vigor.

The country has been harassed and degraded for generations by the Slave Power, which was nothing but an oligarchy, aristocracy, caste, and monopoly; and now, when this power has been overcome in battle, it is proposed to inaugurate it anew, with slight change of name, but with the same field of action, and the same malignant spirit to wield its energies. By your concession

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it tyrannized before, and now by your concession it will tyrannize again. The citizens it once trampled on as slaves it will continue to trample on as outcasts, and it will set up your permission emblazoned in the Constitution itself.

5. Proceeding with this proposition, I exhibit it as petrifying in the Constitution the wretched *pretension of a white man's government.* At this moment, when we are striking the word "white" from the national statutes, when this word has disappeared even from Post-Office laws, when, by a vote of the House of Representatives, it has been condemned in the laws regulating the elective franchise in the District of Columbia, it is proposed to insert an equivalent in the Constitution itself. To exhibit this shame is surely enough to make you turn away from it. Do not say that this is not proposed. What is the concession that the elective franchise may be denied or abridged "on account of race or color" but an insertion of the word "white" in the National Constitution? In that text, as it still stands, from beginning to end, from the preamble to the signature of George Washington, or the last word of the last Amendment, there is no recognition of "color." For the sake of decency, keep it so.

6. Proceeding still further with the proposition, I exhibit it as assuming, what is false in Constitutional Law, *that color can be a qualification for an elector.* The Constitution says that "the electors in each State shall have the *qualifications* requisite for electors of the most numerous branch of the State Legislature." Of course this leaves open the question, What is meant by "quali-

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fications"? But this word must be interpreted in the light of the Constitution, which knows no "color," and again in the light of the Declaration of Independence, which knows no "color," and yet again in the light of common sense, which refuses to recognize "color" as a "qualification," in any just sense of the term. Consult the dictionaries of the day, and you will find it means "fitness," "ability," "accomplishment," "the state of being qualified"; but it does not mean "color." It is applicable to the conditions of age, residence, character, education, property, and the payment of taxes; but it cannot be applicable to "color." The English dictionaries most in vogue at the time of our fathers were those of Bailey and Johnson. According to Bailey, who was the earliest, "qualification" is defined:—

"(1.) That which fits any person or thing for any particular purpose.

"(2.) A particular faculty or endowment, an accomplishment."

According to Johnson, who is the highest authority, it is defined:—

"(1.) That which makes any person or thing fit for anything.

"EXAMPLE. — It is in the power of the prince to make piety and virtue become the fashion, if he would make them necessary *qualifications* for preferment. — SWIFT.

"(2.) Accomplishment.

"EXAMPLE. — Good *qualifications* of mind enable a magistrate to perform his duty, and tend to create a public esteem of him. — ATTERBURY."

According to these definitions "qualification" means "fitness" or "accomplishment," and according to examples from classical writers it means qualities like

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"piety" and "virtue," or like "mind." Obviously it cannot embrace color, which is a physical condition, insurmountable in nature. An insurmountable condition is not a *qualification*, but a *disfranchisement*. As well say that the quality of the hair or the length of the foot should be a "qualification," as the color of the skin. The whole pretension is one of the false glosses fastened upon the National Constitution by Slavery, which must now be sloughed off.

7. Again, I exhibit the proposition as positively *tying the hands of Congress in its interpretation of a republican government*, so that, under the guaranty clause, it must recognize an oligarchy, aristocracy, caste, and monopoly founded on color, with the tyranny of taxation without representation, as *republican in character*, which I insist they are not. At present the hands of Congress are not tied. Congress is free to act generously, nobly, truly, according to the highest idea of a republic, discountenancing all inequality of rights and the tyranny of taxation without representation. Let this pretension find place in the Constitution, and the guaranty clause will be restricted in operation. The two clauses taken together, as they must be, will read substantially: "The United States shall guaranty to every State in this Union a republican form of government: it being understood that the denial or abridgment of the elective franchise on account of race or color, and the tyranny of taxation without representation, are not inconsistent with a republican government." In other words, the denial or abridgment of the elective franchise on account of race or color, and the tyranny of taxation without representation, will be recognized in the Constitu-

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tion as republican in character. Of course all attempt to enforce this guaranty against an oligarchy, aristocracy, caste, and monopoly founded on color, or against the tyranny of taxation without representation, will be from this time impossible. The precious power now existing will be lost forever.

8. Again, I exhibit the proposition as *positively tying the hands of Congress in completing and consummating the abolition of Slavery.* By the second clause of the recent Constitutional Amendment Congress is expressly empowered to "enforce" the abolition of Slavery by "appropriate legislation." Accordingly, the Senate, by what is known as the Civil Rights Bill, has already undertaken to establish equality of civil rights in all the States and Territories, so that hereafter, in our courts at least, there shall be no discrimination of color. It was justly insisted that such "legislation" is needed to "enforce" the abolition of Slavery, and on this account is constitutional. The Senate acted accordingly. The bill has passed this body by more than a two-thirds vote. Obviously by the same title equality in political rights can be established also under this Amendment, if such equality shall be deemed important to "enforce" the abolition of Slavery, or, in other words, to complete and consummate the good work. In the exercise of a granted power Congress is sole judge of the "means" it employs; and this conclusion is sustained not only by reason, but by the Supreme Court of the United States in solemn judgments. You will remember the familiar precedents, which I insist are decisive. And now, in the face of these judgments, in the face of reason, and with the authoritative precedent of the Senate estab-

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lishing equality of civil rights before us, it is proposed to insert in the Constitution a provision despoiling Congress of its power under the Constitutional Amendment, so that hereafter that Amendment, which should be interpreted generously and to advance Liberty, will be changed so as to read: "Congress shall have power to enforce this article by appropriate legislation: it being understood that it shall not interfere for this purpose with any denial or abridgment of the elective franchise in any State on account of race or color." Thus again will a beneficent power be lost at a moment when all is needed for the safety and renown of the Republic.

9. Again, I exhibit this proposition as *installing recent rebels to govern loyal citizens* under sanction of the Constitution. The ruling class began and sustained the Rebellion. The citizens you disfranchise were loyal, and some of them poured out their red blood for the Republic; and yet we are asked to intrench this ruling class in the Constitution, so that they can wield unchecked power, while loyal millions are humbled at their feet. The bare statement offends reason and conscience.

Pray, who may justly look to the Republic for protection? Is it the rebel or the loyal? Is it the citizen who has caused all your woes, and now gnashes his teeth at your triumph, — or is it the citizen who has watched your flag with sympathetic pride, and now rejoices in your triumph? Who can hesitate? And yet the proposition before the Senate gives the palm of power and honor to the rebel class, and fixes this preeminence in the National Constitution. You cannot say, more than Cain, "Am I my brother's keeper?"

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You are your brother's keeper; and you must see that he is saved from cruel oppression.

10. And, lastly, I denounce this proposition as a *compromise of human rights*, the most questionable of any in our history. Persons out of the Senate have sought to vindicate it, as other compromises in times past, by representing it as something which it is not. This is done by exhibiting one side only of the compromise, and thus calling it "punitive"; as if in 1850 the admission of California, which was one side of the compromise, had been exhibited, while the unutterable atrocity of the Fugitive Slave Bill, which was the other side, had been concealed from view. The present compromise, like other compromises, has two sides; in other words, it is a concession for a consideration. On one side it is conceded that the States may, under the Constitution, exclude citizens counted by the million from the body politic, and practise the tyranny of taxation without representation, provided, on the other side, there is a corresponding diminution of representative power in the lower House of Congress, without, however, touching the representative power in the Senate. The glaring feature of this compromise is the criminal concession, constituting the sacrifice of brave defenders, and even of a whole race, to whom we owe protection. The consideration is small. It will be forgotten, when the monstrous concession looms in history as a landmark of dishonor.

There have been other compromises of human rights in times past. But, considering the grandeur of the occasion, the promises of the Fathers, the extent of present obligations, the promptings of gratitude, the

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demands of public faith, the exigencies of public security, and the good name of the Republic, all now involved, I am sure that no compromise so discreditable and disastrous was ever before proposed. A feeble prototype may be found in that intolerable treaty known as the Assiento, from which every Englishman turns with a blush, where, at the end of an unprecedented war, England bartered all that had been won by the victories of Marlborough for the privilege of supplying slaves to the Spanish colonies. The slave-trade received solemn sanction, and England pocketed the dishonest profits, — just as now a kindred offence on a grander scale is to receive solemn sanction, and we who sanction it are to pocket the profits in political power. Do not talk, Sir, of this measure as "punitive," unless you mean that it is punitive of benefactors, — for this is the only character it can bear in history. On a former occasion I entreated you not to copy the example of Pontius Pilate, who handed over the Saviour of the world, in whom he found no fault at all, to be scourged and crucified. It is my duty now to remind you that you go further than Pontius Pilate. He was a mocker and a jester;[1] but he received nothing for what he did. You do. Not content with resolving the Senate into a Prætorium, I feel rather that you imitate Judas, who betrayed the Saviour for thirty pieces of silver, and imitate the soldiers who appropriated to themselves the raiment of the Saviour. Do not answer me with a sneer. Has not the Saviour himself told us that what we do to the least we do to Him? Ay, Sir, in offering fellow-citizens to be sacrificed, in betraying them for

[1] "'What is truth?' said jesting Pilate, and would not stay for an answer." — BACON, *Essays:* Of Truth.

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less than "thirty" Representatives in Congress, and in appropriating their political raiment, you do all this to the Saviour himself. Pardon this necessary plainness. I speak for my country, which I seek to save from dishonor; I speak for fellow-citizens whom I would save from outrage; and I speak for that public faith and public security in which is bound up the welfare of all.

Mr. President, such is the argument for the rejection of this pretended Amendment. Following it from the beginning, you have seen, first, how it carries into the Constitution the idea of Inequality of Rights, thus defiling that unspotted text; secondly, how it is an express sanction of the acknowledged tyranny of taxation without representation; thirdly, how it is a concession to State Rights at a moment when we are recovering from a terrible war waged against us in the name of State Rights; fourthly, how it is the constitutional recognition of an oligarchy, aristocracy, caste, and monopoly founded on color; fifthly, how it petrifies in the Constitution the wretched pretension of a white man's government; sixthly, how it assumes, what is false in Constitutional Law, that color can be a "qualification" for an elector; seventhly, how it positively ties the hands of Congress in fixing the meaning of a republican government, so that under the guaranty clause it will be constrained to recognize an oligarchy, aristocracy, caste, and monopoly founded on color, together with the tyranny of taxation without representation, as not inconsistent with such a government; eighthly, how it positively ties the hands of Congress in completing and consummating the abolition of Slavery according to the sec-

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ond clause of the Constitutional Amendment, so that it cannot for this purpose interfere with the denial of the elective franchise on account of color; ninthly, how it installs recent rebels in permanent power over loyal citizens; and, tenthly, how it shows forth its unmistakable character as a compromise of human rights, the most questionable of any in our history.

And now the question occurs, What shall be done? To this I answer, Reject at once the pretended Amendment; show it no favor; give it no quarter. Let the country see that you are impatient of its presence. But there are other propositions, in the form of substitutes. For any one of these I can vote. They may differ in efficiency, but there is nothing in them immoral or shameful. There is, *first*, the proposition to found representation on voters instead of population, and, *secondly*, the proposition to secure equality in political rights by Constitutional Amendment or by Act of Congress.

The proposition to found representation on voters instead of population was originally introduced by me during the last Congress. Almost at the same time I presented a series of resolutions declaring not only the power, but the duty, of the United States to guaranty republican governments in the Rebel States on the basis of the Declaration of Independence, so that the new governments should be founded on the consent of the governed and the equality of all persons before the law. Thus, while proposing to found representation on voters, I at the same time asserted the power of Congress under the Constitution to secure equality in political rights. The proposition with regard to voters was much

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discussed during the recess of Congress. At the beginning of the present session it seemed to find favor. But at last statistics were adduced tending to show that it would transfer power from Eastern States to Western States in proportion to the excess of females over males in the former; and this abnormal circumstance was made an argument against it. Since then it has given place to the offensive attempt now pending.

The proposition to found representation on voters instead of population may be seen, *first*, in what it does not, and, *secondly*, in what it does.

Seeing it in what it does not, all will confess that it does not carry into the Constitution itself the idea of Inequality of Rights, thus defiling that unspotted text; that it gives no sanction to the acknowledged tyranny of taxation without representation; that it makes no concession to State Rights, at a moment when we are recovering from a terrible war waged against us in the name of State Rights; that it does not recognize an oligarchy, aristocracy, caste, and monopoly founded on color; that it does not petrify in the Constitution the wretched pretension of a white man's government; that it does not assume, what is false in Constitutional Law, that color can be a "qualification" for a voter; that it does not positively tie the hands of Congress in fixing the meaning of a republican government, so that under the guaranty clause it will be constrained to recognize an oligarchy, aristocracy, caste, and monopoly founded on color, together with the tyranny of taxation without representation, as not inconsistent with such a government; that it does not positively tie the hands of Congress in completing and consummating the abolition of Slavery according to the second clause of

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the Constitutional Amendment; that it does not install recent rebels in permanent power over loyal citizens; that it does not show forth in unmistakable character as a compromise of human rights, the most questionable of any in our history. All these things, so offensive to the conscience and the reason, this proposition avoids. In all these respects it is at least blameless.

On the other hand, without inflicting any stigma upon the Constitution or upon the Republic, without abandoning any principle, without making any concession to the States, without tying the hands of Congress, and without any compromise of human rights, it does rearrange the basis of representation so as to accomplish all that is proposed even by the most sanguine supporters of the other attempt, and it does this effectually, without the opportunity for evasion afforded by the other proposition. The alleged inequality in operation, owing to excess of females over males in certain States, may make you hesitate; but better take representation founded on voters, even with any such alleged inequality, than do a grievous wrong. Better wrong yourselves than wrong others.

Let me confess that I was tempted to this proposition by the conviction that I was carrying out the cherished idea of Massachusetts embodied in her own Constitution. According to a recent Amendment, the representation in both branches of the Legislature is founded on "legal voters," and not on population. Here are the words.

"A census of the *legal voters of each city and town* on the first day of May shall be taken and returned into the office of the Secretary of the Commonwealth. . . . . The enumeration aforesaid shall determine the apportionment of Representatives for the periods between the taking of the census.

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"The House of Representatives shall consist of two hundred and forty members, which shall be apportioned by the Legislature, at its first session after the return of each enumeration as aforesaid, to the several counties of the Commonwealth, *equally, as nearly as may be, according to their relative numbers of legal voters*, as ascertained by the next preceding special enumeration. . . . .

"The Senate shall consist of forty members. The General Court shall, at its first session after each next preceding special enumeration, divide the Commonwealth into forty districts of adjacent territory, *each district to contain, as nearly as may be, an equal number of legal voters*, according to the enumeration aforesaid. . . . . Each district shall elect one Senator." [1]

Obviously, in adopting this rule, Massachusetts has followed what seems a correct principle. Representative government is an invention of modern times. It was unknown in antiquity. Athens was a democracy where the people met in public assembly for the government of the state: there was no representative body chosen by the people for this purpose. The public assembly was practicable in that age, as the state was small, and the assembly seldom exceeded six thousand citizens,—a large town meeting, or mass meeting, which Milton has termed "that fierce democratie." But where the territory was extensive and the population scattered and numerous, there could be no assembly of the whole body of citizens. To meet this precise difficulty the representative system was devised. By a machinery so obvious that we are astonished it was not employed in the ancient commonwealths, the people, though scattered and numerous, are gathered, through

[1] Articles of Amendment, XXI., XXII.

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their chosen representatives, into a small and deliberative assembly, where, without tumult or rashness, they may consider and determine all questions which concern them. In every representative body properly constituted the people are practically present.

If, then, the representative body is a substitute for the people themselves meeting in primary assemblies, it would seem that it must be founded upon the people who compose the primary assemblies, — in other words, upon legal voters. Ordinarily there may be little difference between the proportion of legal voters and the proportion of population; but, strictly, the representative system is the agent of legal voters, and therefore the logic of the case is better satisfied, if it be founded on legal voters rather than on population. With me this is no new idea. On another occasion, in my own State, I asserted it. This was in a Convention for revising the Constitution of Massachusetts, as long ago as 1853. Pardon me, if I read a brief passage from a speech in that Convention, not from any importance which I attach to it, but as showing how completely at that time this rule seemed to me just.

"A practical question arises here, whether this rule should be applied to the whole body of population, including women, children, and unnaturalized foreigners, or to those only who exercise the electoral franchise, — in other words, to voters. It is probable that the rule would produce nearly similar results in both cases, as voters, except in few places, would bear a uniform proportion to the whole population. But it is easy to determine what the principle of the Representative system requires. Since its object is to provide a practical substitute for meetings of the people, it should be founded, in just proportion, on the numbers of those who,

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according to our Constitution, can take part in those meetings, — that is, upon the qualified voters. The representative body should be a miniature or abridgment of the electoral body, — in other words, of those allowed to participate in public affairs." [1]

In this view I found myself supported by two illustrious names in our history. Mr. Jefferson, shortly after the victory at Yorktown had rescued Virginia from invasion and secured national independence, prepared the draught of a Constitution for his native State, which expressly provided that "the number of delegates which each county may send shall be *in proportion to the number of its qualified electors,* and the whole number of delegates for the State shall be *proportioned to the whole number of qualified electors in it.*" [2] This proposition, which is substantially the Rule of Three applied to voters, was not adopted, but it remains a record of opinion. Some time afterward, in the debates in the Convention which framed the National Constitution, Mr. Madison gave his authority to the same conclusion.

"It had been very properly observed that representation was an expedient by which the meeting of the people themselves was rendered unnecessary, and *that the representatives ought, therefore, to bear a proportion to the voters which their constituents, if convened, would respectively have.*" [3]

Thus representation founded on voters seems commended by authority and principle. Its adoption would at least give symmetry to our national system, and make the representative more precisely the embodied presence

[1] Speech on the Representative System, July 7, 1853: *Ante*, Vol. III. p. 242.

[2] Notes on Virginia, Appendix, No. II.: Writings, Vol. VIII. p. 443.

[3] Debates in the Federal Convention, July 14, 1787: Madison Papers, Vol. II. p. 1102.

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of his constituents, while at the same time it would tend to enlarge the suffrage, and to harmonize sectional pretensions with the national will, when exerted for human rights. If representation were founded on voters, the States would care little, if Congress should annul all inequality in the elective franchise on account of color. The way would be open to Congress.

There are other propositions to my mind more satisfactory, because they reach the special necessity of the hour, and provide the only effectual remedy. Speaking in the name of national justice and for the national safety, they cannot be put aside with indifference; nor is it wise to say that any measure of justice is not practical. I refer, of course, to the propositions, in different forms, to secure that great guaranty, *equality in political rights*, by Constitutional Amendment, or by Act of Congress, or by both.

A Constitutional Amendment placing equality of political rights under the safeguard of a specific text may be superfluous, but it is not unconstitutional or immoral. It will be supplementary to provisions already in the Constitution, and in the nature of a declaratory statute removing all doubts and cavils. It will be like an additional force in mechanics, or like a reinforcement in the field. It will be reduplication in a new form. On such an occasion, where such a cause is in issue, I welcome every alliance; and such I regard the proposition of the Senator from Missouri [Mr. HENDERSON].

The other proposition, looking to the direct action of Congress under the National Constitution and existing

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Amendments, is obviously the simplest and most practical, inasmuch as it deals with the exigency promptly, frankly, and according to the necessities of the hour. It does not undertake to act by indirection; nor does it postpone to an indefinite future what cannot be postponed without detriment to the Republic. Refusing to procrastinate, it saves all. Such a proposition is commended by every argument of reason, humanity, and patriotism. To say that it is not constitutional is to say that the Constitution itself is not constitutional; for it is derived from the very heart of the Constitution, and is filled with all its best life-blood.

Something has been said of the form in which the proposition is presented. There is the bill of the Senator from Illinois [Mr. YATES], which he has maintained in a speech of singular originality and power, that has not been answered, and I do not hesitate to say cannot be answered. By this bill it is provided that all citizens in any State or Territory shall be protected in the full and equal enjoyment and exercise of civil and political rights, including the right of suffrage. This is founded on the consideration that by the abolition of Slavery the slave became at once a citizen, subject only to such disabilities as are common to other citizens, and that by the second clause of the Constitutional Amendment Congress is empowered to enforce the abolition of Slavery by appropriate legislation. On this foundation the Senator places his bill, assuming, that, to complete the abolition of Slavery, all restrictions, penalties, or deprivations of right, resulting from Slavery in any State or Territory, must be made to cease. The proposition that I have had the honor of presenting is a joint resolution, which, after declaring

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the duty of Congress to guaranty a republican form of government in States where the governments have lapsed, and also the duty to complete the abolition of Slavery by the removal of all relics of this wrong, proceeds to provide that there shall be no oligarchy, aristocracy, caste, or monopoly, nor any denial of rights, civil or political, on account of race or color, but all persons shall be equal before the law, whether in the court-room or at the ballot-box.[1] Not doubting the power of Congress to carry out this principle everywhere within the jurisdiction of the United States, I content myself for the present by asserting it only in the lapsed States lately in rebellion, where the twofold duty to guaranty a republican government and to enforce the abolition of Slavery is beyond question. To that extent I now urge it.

Both these propositions are opposed as informal and inoperative, because without machinery or penalty. Such is the objection, if I understand it. As it has been made, I answer it. Each on its face is an Act of Congress prohibiting denial of certain rights on account of color. In this respect each is at least a Congressional interpretation of the Constitution, and it is by no means clear that it could not be enforced in the courts. The bill which has already passed the House of Representatives, striking out the word "white" in the electoral laws of the District of Columbia, is without machinery or penalty; but it is at least a Congressional declaration, to be followed, of course, by other legislation with proper machinery and penalty; and this is the precise character of the measures pre-

[1] *Ante*, pp. 113, 114.

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sented by the Senator from Illinois and myself. Objection, if valid at all, must be equally valid against the bill for enfranchisement in the District of Columbia, and against every other Congressional declaration without machinery or penalty. It is, at most, one of form, which I put aside and advance to the substance. The question is too vast and the times are too serious for a special demurrer. It must be tried on its merits. The question is on the power of Congress to establish equality of political rights, at least in the Rebel States. If Congress has this beneficent power, then exercise it in such form as shall seem best, with machinery and penalty or without machinery and penalty; but, in God's name, exercise it, for the sake of the country, which suffers from your delay.

Has Congress power to secure equality of political rights, at least in the Rebel States? I do not at this time raise the question of its power throughout the United States, but in the Rebel States. If this question were less transcendent in its relations, or if it could be approached calmly and without prejudice, in the light of reason, I cannot doubt the judgment. But you must bring to its determination the same simple desire for truth, undisturbed by external influences, which would control a judicial tribunal; for, in the determination of your powers under the Constitution, you are a judicial tribunal. It will not be enough to deny the beneficent power, or to mock at those who find it in the Constitution. You must answer their arguments.

1. I need not dwell on what has been so often discussed and so much misunderstood; and yet I must

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remind you of the power of Congress over the Rebel States from *the necessity of the case;* because, after the overthrow of legitimate governments, whose members were sworn to support the Constitution of the United States, there was no other rule possible for these States than that of Congress, — precisely as the Territories, according to Chief Justice Marshall, in a famous judgment, fell under "the power and jurisdiction of the United States" from the necessity of the case.[1] I do not say that a State becomes a technical Territory, as that term is understood among us; but I do say, that, in the lapse of the Rebel States, and in the absence of legitimate governments with members sworn to support the Constitution, these States fell under "the power and jurisdiction of the United States," — meaning, practically, Congress, — until such time as they are reorganized according to the requirement of the Constitution. In the exercise of such a power and jurisdiction thus cast upon it, Congress must see that all loyal citizens, without distinction of color, take part in the formation of the new governments.[2]

2. Nor need I dwell on another source of power, found in *the rights of war;* but this, too, must be made plain. Nobody doubts that the United States were justified in asserting supremacy in the Rebel States by force of arms. But the war, when once begun, was subject to all the conditions of war, according to the rights of war found in the Law of Nations, — doubly obligatory on us, first, because we belong to the family

[1] American Insurance Co. *v.* Canter, 1 Peters, S. C. R., 542.

[2] This was done in the Act of March 2, 1867, "to provide for the more efficient government of the Rebel States." — *Statutes at Large*, Vol. XIV. p. 428.

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of nations, and, secondly, because the Law of Nations is expressly recognized by the Constitution itself. Now, according to the rights of war found in the Law of Nations, a conquering power is justified in requiring not only indemnity for the past, but security for the future. It depends upon the people of the United States, represented in Congress, to determine the guaranties of this security. In support of this conclusion, I ask attention to a familiar authority, whose statement seems to cover the case. I read from Vattel:—

"The whole right of the conqueror comes from that just self-defence which comprehends the maintenance and prosecution of his rights. When, therefore, he has entirely subdued a hostile nation, he may undoubtedly, in the first place, do himself justice with regard to that which gave rise to the war, and indemnify himself for the expenses and damages it has caused him; he may, according to the exigency of the case, impose penalties upon the conquered nation by way of example; he may even, if prudence require, *render it incapable of doing harm so easily in future.*" [1]

The offending party, when conquered, may be rendered incapable of doing harm so easily in future. This is according to natural justice. Then again the same familiar authority says:—

"If the inhabitants have been personally guilty of any criminal attempt against the conqueror, *he may by way of punishment deprive them of their rights and franchises.* This, again, he may do, if the inhabitants have taken up arms against him and thus directly rendered themselves his enemies. He then owes them nothing more than what is due from a humane and equitable conqueror to subjugated enemies." [2]

[1] Le Droit des Gens, Liv. III. ch. 13, § 201. [2] Ibid., § 199.

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Surely, out of this ample power Congress cannot hesitate in requiring justice to the wards and allies of the Republic through whom the Rebellion was crushed, especially when without justice to them security in the future is nothing but a mockery and a phantasmagoria.

3. From these sources of power I pass to that other found in *the constitutional obligation to guaranty to every State of the Union a republican form of government.* Here is the text:—

"The United States shall guaranty to every State in this Union a republican form of government."

This obligation is peremptory, and not discretionary. It is *shall*, and not *may*. The United States *must* do it. Of course, in executing the guaranty, you must affix a meaning to the term "republican form of government." To do this I have in this debate endeavored to show the essential principles our fathers had at heart when they founded the Republic. I shall not weary you again with the historic statement. It is enough, if I present the conclusion. According to the Fathers, all men are equal in rights, and, as corollaries from this truth, all just government is founded on the consent of the governed, and taxation without representation is tyranny. Such was their idea of a republican government.

It is idle to allege against this definition, that there were property "qualifications" in most of the States, by which the number of voters was essentially limited. This is true. But it must not be forgotten that a property "qualification," unless unreasonably large, is not a

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disfranchisement. It is a condition, sometimes onerous, but not in its nature insurmountable, as the condition of color, and it is equally applicable to all. And yet it is apparent, from the recorded opinions of the Fathers, that even this "qualification" was regarded as inconsistent with the genius of republican institutions.

It is idle also to allege against this definition the toleration of Slavery. This was sad enough; but the Fathers who tolerated Slavery regarded it as absolutely exceptional. According to the definition of a slave, he has no will of his own, and can give no "consent" to government. Therefore he was not considered as belonging to the "body politic." But not being represented, he was not taxed, except as property. Indeed, a careful examination of his relations to the government shows how completely in his case the rights of "the people" are left untouched. He was not regarded as one of "the people," and therefore was not under the safeguard of the rights of "the people." But all this was changed when he became a freeman. He was then one of "the people," whose property could not be taken by taxation without representation, and whose consent was essential to government. The difference was not between whites and blacks, but between slaves and freemen. All freemen, without distinction of color, were citizens. Listen, if you please, to the "Federalist," in an article attributed to each of the three eminent authors of that collection, and which the Senator from Maryland [Mr. JOHNSON] assumed was by Madison, but which is claimed for Hamilton, in the last edition of the "Federalist," by his son. I quote a second time the important words:—

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"It is only under the pretext that the laws have transformed the negroes into subjects of property, that a place is denied to them in the computation of numbers; AND IT IS ADMITTED, THAT, IF THE LAWS WERE TO RESTORE THE RIGHTS WHICH HAVE BEEN TAKEN AWAY, THE NEGROES COULD NO LONGER BE REFUSED AN EQUAL SHARE OF REPRESENTATION WITH THE OTHER INHABITANTS."[1]

Such is the exposition of the actual Constitution by Hamilton. According to him, "If the laws were to restore the rights which have been taken away, *the negroes could no longer be refused an equal share of representation* with the other inhabitants." But this very hour has sounded. The laws have restored the rights which had been taken away, and it is now your duty to see that the people who have regained their rights are no longer refused an equal share of representation. The opinion of Hamilton on this vital question is still further attested by his saying that the liberty for which our fathers fought was the right of "each individual" to "a share in the government";[2] that "the electors are to be *the great body of the people* of the United States";[3] and still further, by the proposition in his Plan of a Constitution:—

"Representatives shall be chosen, except in the first instance, by *the free male citizens and inhabitants* of the several States comprehended in the Union, all of whom, of the age of twenty-one years and upwards, *shall be entitled to an equal vote.*"[4]

In this proposition, which, though not adopted in terms, may be regarded as the pole-star of our fathers,

[1] The Federalist, No. LIV.
[2] Phocion, Letter II.: Works, Vol. II. p. 316.
[3] The Federalist, No. LVII.
[4] Works, Vol. II. p. 396. Madison Papers, Vol. III., Appendix, No. 5, p. xxi.

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the distinguished author followed the Continental Congress, which recommended the apportionment of the war expenses among the "free citizens and inhabitants," without distinction of color.[1]

This rule is in entire conformity with that matured by ancient experience, especially in Greece, where, according to the universal master, Aristotle, —

"The whole body of the inhabitants of a country enjoying the protection of its laws, including the young who are still under the legal age, and the very old who have passed the time of action, and all others under any other species of disability, are in a certain wide and general sense citizens; but the full and complete definition of a *citizen* is confined to those who participate in the governing power."[2]

Proving, as I have, that colored persons are citizens, this very definition teaches that they cannot be refused participation in the governing power.

The historian Thirlwall, in his studies of Greek polity, recognized this rule, when he wrote: —

"But a finished democracy, that which fully satisfied the Greek notion, was one in which every attribute of sovereignty might be shared, without respect to rank or property, by *every freeman*."[3]

In recognizing the right of "every freeman" to the full enjoyment of the elective franchise, our fathers followed the early example.

Curiously enough, we find confirmation of the true principle, where you would little expect it, in that

[1] *Ante*, p. 189.

[2] Politics, Book III. ch. 1. See abstract by Tremenheere, Political Experience of the Ancients, p. 11.

[3] History of Greece (London, 1835), Vol. I. p. 409, Ch. X.

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very Dred Scott decision which undertook to blast a race. Chief Justice Taney on that occasion laid down a rule which at this moment is applicable to every "citizen," without distinction of color: —

"The words, 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body, who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the 'sovereign people'; *and every citizen is one of this people, and a constituent member of this sovereignty.*"[1]

This is strong enough; but Mr. Justice Daniel is still more precise: —

"There is not, it is believed, to be found in the theories of writers on Government, or in any actual experiment heretofore tried, an exposition of the term *citizen*, which has not been understood as conferring *the actual possession and enjoyment, or the perfect right of acquisition and enjoyment, of an entire equality of privileges, civil and political.*"[2]

Thus does that terrible judgment, once a ban to the colored race, now testify to their indisputable rights as "citizens."

Therefore I cannot hesitate to say, that, when the slaves of our country became "citizens," they took their place in the "body politic" as a component part of the "people," entitled to equal rights, and under protection of two guardian principles, — first, that all just government stands on the consent of the governed, and, secondly, that taxation without representation is tyranny; and these rights it is the duty of Congress to

[1] Dred Scott v. Sandford, 19 Howard, R., 404. [2] Ibid., 476.

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guaranty as essential to the idea of a republic. The aspiration of Abraham Lincoln, in his marvellous utterance at Gettysburg, was, that "government of the people, by the people, and for the people should not perish from the earth." But who will venture to exclude from the "people" millions of citizens?

If governments in the Rebel States are brought to this criterion, they must fail. The departure from the true standard is not merely theoretical, as it might be regarded in States where the disfranchised are few in number, but there is an absolute failure to come within the conditions required. It is not decent to call a State republican, where more than a majority of its "people," constituting the larger part of the "body politic," is permanently disfranchised; nor is it decent to call a State republican, where any considerable portion of the "people," constituting an essential part of the "body politic," is permanently disfranchised. If in times past such a State could have been treated as republican, it will not do to treat it so now. It lacks the vital elements, and must be treated accordingly. I do not dwell on this point, for it seems absurd to call it in question.

Clearly it is your duty to enforce the guaranty. By your oaths to support the Constitution, you must take care that in all the States where governments have lapsed this guaranty shall be carried out. In performance of this duty you may proceed either by an *enabling act*, establishing in advance the conditions of restoration to "practical relation with the Union," or by an act directly annulling all constitutions and laws inconsistent with a republican government. The power is in Congress. It has been recognized in formal terms

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by the Supreme Court; and you are the final judge of the "means" to be employed. To say that you have not the power is to abdicate at a great exigency and renounce the very means of salvation. It is to fling away your arms in the very face of the enemy. It is to spike the Constitution at a moment when its full cannonade is needed for the overthrow of wrong. Clearly the power is yours, and upon your heads will be the fearful responsibility, if you fail to exercise it.

4. From this power in the Constitution I pass to another, also in the Constitution, supplied by the *second clause of the Constitutional Amendment.* It is there provided that Congress shall "enforce" the abolition of Slavery by "appropriate legislation." Here, according to all rules of interpretation and the judgments of the Supreme Court, Congress is empowered to do what in its discretion seems best to this end. It may adopt any "means" which seem "appropriate." It may select any weapon in the arsenal. I do not stop to cite judgments of the Court, or to dwell on this power. The case is clear, and I challenge contradiction. As the grant is recent, it is not open to any suggestion of loss or waiver by desuetude or non-user. It is fresh as the abolition of Slavery itself, and at this moment is just as vital. You may as well deny the one as the other.

Here, even at the cost of repetition, allow me to remind you that already, during the present session, the Senate, in pursuance of this power, has undertaken to pass "a bill to *protect all persons in the United States in their civil rights,* and furnish the means of their vindication." The declared object of the bill, in its very title, is the protection of all persons in the United

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States in their civil rights; and this object is carried out by the following provision:—

"There shall be no discrimination in civil rights or immunities among the inhabitants of *any State or Territory of the United States* on account of race, color, or previous condition of slavery."

The bill proceeds to provide machinery and penalties for the enforcement of this prohibition. Mark, if you please, that this is not merely in the Rebel States, nor even in the States where Slavery was recently abolished, but everywhere throughout the United States. All this is done by virtue of that very clause of the Constitutional Amendment which I adduce. It is done by Congress, in the exercise of its discretion, in order to "enforce" the abolition of Slavery. It is the "means" which Congress adopts. It is the weapon which Congress selects from the arsenal. But surely, if Congress, in order to "enforce" the abolition of Slavery, can secure all persons throughout the United States in *civil rights*, it can, out of the same abundant power, secure all persons throughout the United States in *political rights;* and this is precisely what is proposed by the bill of the Senator from Illinois. My own proposition, as I now present it, aims for the present at securing *political rights* throughout the Rebel States; but the irresistible argument is the same in each case. Each is to "enforce" the abolition of Slavery.

I do not stop to exhibit the elective franchise as essential to the security of the freedman, without which he will be the prey of Slavery in some new form, and cannot rise to the stature of manhood. In opening this debate I presented the argument fully. Suffice it to say, that Emancipation will fail in beneficence, if

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you do not assure to the former slave all the rights of the citizen. Until you do this, your work will be only *half done*, and the freedman only *half a man*.

Such, Sir, are four sources of power, — each ample: first, the necessity of the case, as with Territories, where there is no other jurisdiction; secondly, the rights of war, under which all needful safeguards for the future may be required; thirdly, the duty to guaranty to every State in the Union a republican form of government; and, fourthly, the authority to "enforce" the abolition of Slavery by "appropriate legislation." Out of each and all Congress may derive its power. It only remains that it should act as becomes the representatives of the American people.

Mr. President, as I am about to close, allow me to remind you once more, that, from the nature of the case and from the character of your obligations, the work of Emancipation must be completed by the National Government. It cannot be left to become the sport of sectional prejudice or wayward passion. It began with you, and it is for you to give it that final assurance to be found only in Enfranchisement. It is for you to "maintain" the former slave in the liberty he received at your hands. Such a duty cannot be renounced or delegated. It must be sacredly performed by the National Government, according to its original pledge in the Proclamation of Emancipation, and according to all the suggestions of reason. Humanity, too, joins in the cry. You cannot consent that the child Emancipation, born of your breath, shall be surrendered to the custody of enemies. Take it in your

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arms, I entreat you, and nurse it into strength. Be instructed by the examples of history, teaching that the masters of slaves cannot be trusted to legislate for them, — a conclusion announced by the best English statesmen, speaking from their experience, in words which I have often quoted. I refer to the concurring voice of Edmund Burke, George Canning, and Henry Brougham. Thus, by testimony as well as by reason, in harmony with the national pledge, we are admonished that the work must be done by the Nation.

Do not say that you have not the power, when the will only is needed. It is the part of a good judge to amplify his jurisdiction: *Boni judicis est ampliare jurisdictionem.* Such is an approved maxim of law, handed down from early days. Kindred in character are other maxims, which enjoin the duty of inclining always in favor of Liberty, to the extent of catching at anything, even a twine thread, by which to save it. But on this occasion the good Congress need not amplify its jurisdiction. Enough, if it enforces what plainly exists. It need not catch at any twine thread to save Liberty. The great cables of the Constitution, with mighty anchors, are at command.

Sir, the freedman must be protected, and not sacrificed. You can do it, but only in one way. Paper will not do it. Parchment will not do it. Compromise will not do it. Give him the strength which comes from the fulness of citizenship, and he will then be protected. Only principles can be followed. They are like Divine promises, which, when properly understood and applied, answer every case of difficulty or distress, and, as in the Pilgrim's Progress, "will open any lock in Doubting Castle." Have faith. Before

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the earnest man difficulties disappear. To the boatman who said it was impossible to brave the storm then raging, William Tell, inspired by patriotic purpose, replied, "I know not whether it be possible, but I know that it must be attempted," — and the deliverer reached his destination. The same courage is needed now. The attempt at least must be made; and who can say that it will fail? On its side will be Providence, the prayers of good men, Nature in her manifold attributes, and the awakened judgment of the civilized world. The time has gone by, when the spirit of caste can continue to bear sway. See to it, Senators, that this spirit has no foothold in the Constitution of our country. To this duty I summon you now, by every obligation of statesmanship, for the sake of the Republic and for your own sakes. To the spirit of caste answer back in the spirit of that Christian truth which you have been taught. Recall the precious words of the early English writer, who, describing "the Good Sea-Captain," tells us that he "counts the image of God nevertheless His image, cut in ebony, as if done in ivory."[1] The good statesman must be like the good sea-captain. His ship is the State, which he keeps safe on its track. He, too, must see the image of God in all his fellow-men, and, in the discharge of his responsible duties, must set his face forever against any recognition of inequality in human rights. Other things you may do; but this you must not do.

[1] Fuller, Holy State: The Good Sea-Captain.

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OPPOSITE SIDES ON THE MEANING OF THE PROPOSED CONSTITUTIONAL AMENDMENT.

FINAL SPEECH IN THE SENATE ON THIS AMENDMENT, MARCH 9, 1866.

WHEN Mr. Fessenden sat down, after his closing speech, Mr. Sumner took the floor and made the following remarks.

MR. PRESIDENT, — Allow me to remind you of that famous shield suspended in the highway, and so often adduced as a lesson of candor. Two travellers approaching from opposite quarters, and standing face to face, read the inscription as each saw it. Straightway there was difference and contest. Each insisted; but closer observation showed that the two sides were different. So it is on the present occasion. The measure before the Senate has two sides. The Senator from Maine [Mr. FESSENDEN], as he approaches it, sees only the side which limits the representation. As I approach it, I see the recognition of a caste and the disfranchisement of a race. He defends it; I condemn it. But he defends only what he sees; I condemn only what I see. It is the misfortune of the measure that it has two sides with two opposite inscriptions. This is especially unhappy at this moment, when we are bound to be frank and loyal, and to do nothing which may be interpreted in a double sense. Above all should this be the case with regard to an

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Amendment of the Constitution. But the present proposition does not fall within these conditions. It is enough that there are at this moment two opposite opinions with regard to its meaning.

Now, Sir, it will not be denied that there are opposite opinions on its meaning. The Senator from Maine affixes one meaning; I affix another. The Senator sees nothing bad; I see nothing good, — or rather, all that it proposes is absorbed, merged, and lost in the evil. Against it I am earnest, and I speak so. For those from whom I differ I have nothing but personal kindness; but I must condemn the text they seek to inject into the Constitution. What is debate? It is the expression of opinions, conclusions, and convictions. These must be expressed fully, freely, and according to the conscience of the speaker. If a measure is deemed bad, unjust, scandalous, founded in wrong principles, and calculated to produce infinite mischief, all this must be said; and it must be said with plainness, according to the nature of the exigency. To this end language is given. The measure must be exposed. There are no terms to be spared which may be needed in this exposition, whether to reach the judgment or the feelings. Of course, on this occasion I see only the subject. The Senator reminds you of the friends whose votes I arraign, — cherished colleagues in both Houses, valued associates in political opinion, and two thirds of the House of Representatives. All this increases my sorrow. It gives me a pang; but it cannot make me change convictions springing from the very depths of conscience, — nor my course.

But I am not alone in my interpretation. Only the other day I presented the petition of the editor of the

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Boston "Recorder," in which he was moved to protest against it in strongest terms, inasmuch as it disfranchised a race and offended against the Declaration of Independence. I have here papers and testimonies showing how extensively this interpretation prevails. Here, for instance, is a communication from an honored citizen of New York, once a member of the other House, one of the Old Guard of Abolitionists, who, from the first gun at Fort Sumter, has seen our duties with a sensitive conscience and a patriotic soul: I mean Gerrit Smith. Mark, if you please, that I cite his words simply as showing how an ingenuous nature is touched by this attempt.

"I see that the House of Representatives approves, and by a very strong vote, the proposed Apportionment Amendment of the Constitution. I see, too, that nearly all the members who are the most radical friends of Freedom are included in this vote, and that there is, therefore, no room in the case for questioning motives. Freedom may, however, be wounded unwittingly. Nay, she may be wounded even in the house of her friends. Such is her fate in the present instance. And no less deep and dangerous is the wound, but, on the contrary, all the deeper and more dangerous, because inflicted by hands which aimed not to harm, but to help her. Moreover, though it is always consoling to be able to trace an error to the understanding, the error may, nevertheless, be quite as pernicious as if the heart were involved in it.

. . . . .

"A disgraceful, if not indeed fatal, blot upon the Constitution and country will be this one. Disgraceful is it to a government to license the gambling-house, even though it be on the condition of being paid for the license. Disgraceful to it to license the brothel or the dram-shop, even

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though on such condition. But how emphatically disgraceful for a government to license Slavery, that crime of crimes, even though the consideration in return for the license be very great, and the pay very tempting! This, however, is the deep disgrace with which the Apportionment Amendment threatens the Constitution and the country. . . . . It is true that Slavery is not literally in the Amendment. It is true, too, that proscription from the ballot-box does not always mean Slavery. But it is also true, that, where such proscription is of one race by another, there is an instance where the proscribed are enslaved. The power, therefore, which this Amendment will give the Southern whites to withhold the ballot from the Southern blacks will be the power to enslave them. If they shall withhold from them the ballot, they will also withhold from them freedom.

. . . . . .

"I notice that a common excuse among the friends of Freedom for favoring this Apportionment Amendment is, that we can get nothing better. I know not how that may be; but I do know that we can get nothing much worse, and that it would be far better to get nothing than to get this."

I have also presented the petition of George T. Downing, Frederick Douglass, and others, representing the colored race in Washington, in which they give their opinions. Protesting against this proposition, as authorizing disfranchisement on account of race or color, they pray Congress

"To favor no Amendment of the Constitution of the United States which will grant or allow any one or all of the States of this Union to disfranchise any class of citizens on the ground of race or color."

They then proceed:—

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"In the Constitution, as it now stands, there is not a sentence nor syllable conveying any shadow of right or authority by which any State may make color or race a disqualification for the exercise of the right of suffrage, and the undersigned will regard as a real calamity the introduction of any words expressly or by implication giving any State or States such power; and we respectfully submit, that, if the Amendment now pending shall be adopted, it will enable any State to deprive any class of citizens of the elective franchise."

Such is the testimony of these very intelligent representatives of colored fellow-citizens. They speak with peculiar authority, from the interest they necessarily have in the question. They speak for the freedmen.

Mr. President, I do not wish to argue the main question again. I have said enough, — the Senator has reminded you several times how much. I am sorry to have trespassed so often and so long. I will not trespass now. Of course, there is a radical difference between the Senator and myself. We see opposite things, when we look at this proposition; and permit me to say, we see opposite things, when we look at the Constitution itself. I cannot see as he sees. I do not believe, that, under the Constitution, even as it exists, the disfranchisement of a considerable portion of fellow-citizens is consistent with a republican government. Still further, I do not believe that "color" can be a "qualification" for an elector. He does. And here is a point of divergence which carries us far apart. He consents willingly to this fatal text. I cannot.

I have listened to all that has been said. But the proposition is to me as obnoxious as ever. I cannot

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see it otherwise. Feeling that caste and disfranchisement on account of color are utterly irreligious, unrepublican, and scandalous, you must pardon me, if I strive to prevent their introduction into the Constitution of my country, especially at a moment when we are under such obligations of gratitude to these outcasts, and when injustice to them is so full of peril to the Republic. I have spoken strongly; you will pardon it to the ardor of my nature and to the strength of my convictions. I have fought a long battle with Slavery, and I confess solicitude, when I see anything looking like concession to this wrong. It is not enough to show me that a measure is expedient; you must show me also that it is right. Ah, Sir, can anything be expedient which is not right? From the beginning of our history, the country has been afflicted with compromise. It is by compromise that human rights have been abandoned. I insist that this shall cease. After all its trials, the country needs repose, — it deserves repose; but repose can be found only in everlasting principles. It cannot be found by inserting in your Constitution the disfranchisement of a race.

This proposition can be fully appreciated in its "bad eminence" only when it is considered as the offering of Congress at this time for the protection of fellow-citizens to whom we are under obligations of gratitude. This is our panacea, our balm of Gilead. This is what we are to do. And the Senate is warned not to give the protection found in the elective franchise, either by Constitutional Amendment or by Act of Congress, — that such a Constitutional Amendment would not be adopted by the people, and therefore we ought not to present it, — and that Congress has not the power

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to establish equality in political rights. Sir, I do not despair of the Republic, — I will not, I cannot. But, if ever I were disposed to despair, it would be when listening to such arguments and excuses. The people are in advance, and will sustain us, if we are courageous. They will adopt any Constitutional Amendment that ought to be adopted. They will adopt anything that is true, just, and noble, for the protection of benefactors, and to carry out the principles of our Government; they will sustain any legislation having such object. This is what they expect. It is what the freedmen expect. It is what the Unionists of the South expect. Not willingly will they be surrendered to the tender mercies of Rebels. They ask Congress to protect them; and they see that this can be only by giving the ballot to the freedmen. I have in my hand a letter from one Southern Unionist addressed to another, and received only yesterday, dated February 25th, and written in the very heart of Alabama, which thus speaks of this very question: —

"All men of common sense must now see that there can now be no loyal civil governments in these States, if the negroes are not permitted to neutralize with their votes the votes of Rebels. On this account I do hope the joint resolution recently introduced in the Senate by Mr. Sumner will prevail. Whatever may have been our former notions in regard to the negro, it is now very evident that practically they are better citizens than the majority of whites, in some portion of the Rebel States. The Declaration of Independence is the true and just basis upon which these State governments must be founded."

Such is the voice of a Unionist of Alabama. He looks to Congress. God forbid that Congress should

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abdicate its beneficent powers! They are all needed for the safety and welfare of the Republic. I cannot, I dare not, help in any such abdication.

The history of the debate and its result appear in the Appendix to the Speech of February 5th and 6th.[1]

[1] *Ante*, pp. 238, seqq.

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NO MORE STATES WITH THE WORD "WHITE" IN THE STATE CONSTITUTION.

SPEECHES IN THE SENATE, ON THE BILL FOR THE ADMISSION OF THE STATE OF COLORADO INTO THE UNION, MARCH 12 AND 13, APRIL 17, 19, AND 24, AND MAY 21, 1866.

MARCH 12th, in the Senate, the bill for the admission of the State of Colorado was taken up for consideration, when Mr. Sumner commenced an opposition, in which he persevered. The question was, in his judgment, of peculiar importance, as involving the true principle of Reconstruction; so that, while insisting upon equal rights in Colorado, he was contributing to the same cause.

In a speech of some length he set forth "three distinct objections at this moment to the admission of Colorado as a State," which he considered in their order: first, the irregularity of the proceedings, ending in the seeming adoption of the Constitution; secondly, the smallness of the population; and, thirdly, that its Constitution was not republican in form, and consistent with the Declaration of Independence, according to the requirement of the Enabling Act. In the course of his remarks on the two latter heads, he said: —

I HAVE here a table of the total vote at the elections in different years. In August, 1861, it was 10,580; in December, 1861, 9,354; in October, 1862, 8,224; in September, 1864, 5,769; in September, 1865, 5,895: so that you will perceive from 1861 to 1865 the vote constantly diminishing, being at the beginning upward of 10,000, and at the end less than 6,000. And when the Constitution was submitted, only 3,025 voted for it, while 2,870 voted against it. The pres-

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ent question is, whether 5,895 voters shall be invested with the powers of a State; whether they shall send into this Chamber two Senators, whose votes shall be equal to the vote of New York, of Pennsylvania, of Ohio, or of Massachusetts. Is that just? Is it fair? When a State is once admitted into the Union, we all know, that, under the National Constitution, it is on a footing of perfect equality; therefore, in advance, before we receive a State into that high equality, we should well consider whether it is in its population entitled to such eminence.

It is no answer to say that Pennsylvania, New York, Ohio, and Massachusetts have large political weight in the other House, which this new State, if received, will not have. The question is, whether in the Senate it will not have a weight to which such a number of voters cannot be justly entitled. This leads me to consider for one moment the functions of the Senate. The Senate of the United States is a peculiar body, utterly without precedent or parallel in the history of any other constitutional government, differing from the upper House of the English Parliament, from the upper House of the French Chambers, from the upper House in Prussia, from the upper House in Italy, inasmuch as it has three functions, — one legislative, one diplomatic, and one executive. By its legislative function, it acts, in coöperation with the other House, in the making of laws; by its diplomatic function, it acts, without coöperation with the other House, on treaties with foreign powers; and by its executive function, it acts, without the other House, on the nominations of the President. A preponderance of power possessed by the larger States in the House of Representatives

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cannot affect the last two functions, the diplomatic and the executive; and the precise question is, whether a few voters, not numbering six thousand, in a distant Territory, shall be organized so as to enter this Chamber, and on questions of diplomacy and on executive questions to neutralize the vote of a large State. Even conceding that on legislative questions, through the preponderance of the large States in the other House, there may be a certain remedy to this disorder, there is no such remedy in the exercise of these two other important functions of the Senate. I submit, therefore, that it is not advisable at this moment to invest this small number of voters with these vast political powers. They must wait a little longer, — wait until they are more numerous, — at least until entitled to one Representative in the other House. At the proper time we shall gladly welcome them; but the time has not come.

There is another objection, which stands forth on the face of their constitution. It is not republican in form, or in harmony with the Declaration of Independence. The requirement of the Enabling Act, under which they pretend to proceed, but which, as I have shown, was already exhausted before they entered upon these proceedings, has these words: —

"That the Constitution, when formed, shall be republican, and not repugnant to the Constitution of the United States and the principles of the Declaration of Independence."[1]

Look now at this Constitution. Article III., entitled "Suffrage and Elections," begins as follows: —

[1] Section 4.

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"SECTION 1. Every *white male citizen* of the age of twenty-one years and upwards, who is by birth, or has become by naturalization or by treaty, or shall have declared his intention to become, a citizen of the United States according to the laws thereof, and who shall have resided in the State of Colorado for six months preceding any election, and shall have been a resident for ten days of the precinct or election district where he offers to vote, shall be deemed a qualified elector, and entitled to vote at the same."

Note well the text, "every white male citizen": in other words, nobody who is not "white," under this constitution, is recognized as entitled to the elective franchise. Now, Sir, I insist — and I here challenge reply from any Senator on this floor — that such a constitution does not comply with the requirement of the Enabling Act, that it is not republican, and that it is repugnant to the principles of the Declaration of Independence. I say that it is not republican; for the first principle of republican government is equality. Let that be denied, and you fail in republican government.

MR. MCDOUGALL [of California]. In what age of the world was there a republic where there was equality? Please answer me that. . . . . I would like to have the single instance where it existed in ancient times, in the middle ages, or in the modern ages.

MR. SUMNER. Speaking on that subject lately, I took occasion to show that there was no such case. The Senator is nearly right. There had been no such case. It was for our fathers, it was left to them, when they undertook to constitute a new government, to declare equality the essential and cardinal principle of a republic. My answer is precise: there had been no

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such case. But the true idea of a republican government began with our fathers, and its definition is found in their Declaration of Independence. Were they not sufficiently explicit? Is their language vague? Call it "a glittering generality," — but there it is, in immortal text, whose truth will be recognized more and more as time advances. You may not recognize it now, but others after you will do it reverence.

I say, therefore, that this constitution is repugnant to the principles of the Declaration of Independence. I say that the government which it constitutes is not a republican government. And now the question is, how that difficulty shall be met. I know well that Senators may say, But there are States in the Union with the same discrimination. Connecticut has it; New York also. But permit me to say, these instances do not at all touch the argument. We are not called now to review the constitution of Connecticut or New York, but we are called at this moment, in the discharge of a solemn duty, to review the constitution of this proposed State. If called in this Chamber, under the responsibilities of official position, to review the constitution of Connecticut or New York, my course would be clear to say that it was not republican in form; but there is no such occasion, and therefore we have no such responsibility. There are other States with regard to which we have at this moment that responsibility, and I allude to them for illustration: I mean the States lately in rebellion. Their constitutions have been overthrown or subverted; new constitutions have been set up, which it becomes the solemn duty of Congress to examine, to see whether they are republican in form, and not repugnant to the principles of the

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Declaration of Independence. We have, in relation to those States, the very responsibility now pressing upon us with regard to this new candidate, distant Colorado. We must examine the constitutions, and see whether or not they are in conformity with those sublime principles which enter into the true idea of a republican government.

Again, Sir, I would urge, that, at this moment, when the whole country is agitated by the great question, What shall be done for the protection of the colored race? — to what extent we shall exercise the high powers of Congress to carry that protection into the Rebel States, — it will be hardly decent for us, in reviewing the constitution of a new State, not to apply the highest possible test. It will not do for us now to recognize this constitution of Colorado as republican in form. We owe it to ourselves to set an example, and to require that in a State organized under our influence a good example shall prevail. How many of us heard with regret the result last autumn in Connecticut, and again in Wisconsin, by which suffrage to the colored race was denied! We felt that by those two votes Liberty had suffered, that an enfranchised race was placed in jeopardy, that its rights were dishonored by those who ought to have upheld them; and now, Sir, you have cast upon you in this Chamber that same identical responsibility. You are, with reference to the constitution of Colorado, in the precise position of the people of Connecticut with regard to their own constitution, and the people of Wisconsin with regard to theirs. Some of us have regretted poignantly the policy of those two States: I hope there will be no occasion to regret any similar policy in this Chamber.

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And now, Sir, in order to bring the Senate to a vote on that question, I send to the Chair an amendment to the bill.

The Secretary read the amendment, namely: —

"Insert at the end of the second section the following proviso: —

"*Provided*, That this Act shall not take effect except upon the fundamental condition that within the State there shall be no denial of the electoral franchise, or of any other rights, on account of race or color, but all persons shall be equal before the law. And the people of the Territory shall, by a majority of the voters, at public meetings to be convened by the Governor of the Territory, declare their assent to this fundamental condition; and the Governor shall transmit to the President of the United States an authentic statement of such assent, whenever the same shall be given, upon receipt whereof he shall by proclamation announce the fact; whereupon, without any other proceedings on the part of Congress, this Act shall take effect."

This amendment was similar to that offered by Mr. Sumner on the Louisiana Bill,[1] and was modelled on what is known as the Missouri precedent, which he proceeded to explain, and then said: —

Possibly a question may arise as to the effect of such a fundamental condition. I do not think there can be any question. I do not doubt that such a fundamental condition, especially if sanctioned by the popular vote according to the terms of the proviso, will be absolutely obligatory on the State. I believe that you may apply to it the language of Mr. Webster's great speech in reply to Mr. Hayne, where, describing and vindicating the Ordinance for the government of the Northwest Territory, he used this very striking, and, to my mind, exquisitely beautiful language, as simple as it is expressive: —

"It laid the interdict against personal servitude in original compact, not only deeper than all local law, but deeper also than all local constitutions."[2]

[1] *Ante*, Vol. IX. p. 317.

[2] Works, Vol. III. p. 264.

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Now, Sir, I call upon the Senate to do for this far Western Territory the same in kind as was done by our fathers for the whole vast Northwest Territory, — to lay an interdict against all inequality of rights in original compact, not only deeper than all local law, but deeper than all local constitutions. Let that be done, and one of the objections to the admission of Colorado will be removed.

Mr. Stewart, of Nevada, followed Mr. Sumner.

March 13th, the debate was resumed, when Mr. Pomeroy, of Kansas, Mr. Lane, of Kansas, Mr. McDougall, of California, Mr. Trumbull, of Illinois, Mr. Cragin, of New Hampshire, Mr. Ramsey, of Minnesota, and Mr. Williams, of Oregon, spoke for the admission; Mr. Saulsbury, of Delaware, Mr. Grimes, of Iowa, Mr. Hendricks, of Indiana, Mr. Wade, of Ohio, Mr. Doolittle, of Wisconsin, and Mr. Conness, of California, spoke against the admission. The chief topics were the Enabling Act and the want of population. In the course of the debate, Mr. Sumner insisted that the population had diminished, and then said: —

But, unhappily, this is not the only way in which this community has fallen, — fallen in population, as my friend says, — fallen, as I shall proceed to show positively, in another respect, far more important than population.

He then showed[1] that the Legislative Assembly of the Territory, at its first session under the organic act, by an act approved November 6, 1861, had provided "that *every male person*" with qualification of residence should be deemed a qualified voter; but that was amended by another act, approved March 11, 1864, by inserting the words "not being a negro or mulatto," which reappeared in the limitation of the constitution before the Senate. He then said: —

Between the introduction of the Enabling Act and the date of its approval, the legislative body of this distant Territory undertook to make this fundamental

[1] From Acts of the Legislative Assembly, as quoted in Special Message of the Governor, January 23, 1866, pp. 1, 2.

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change in its electoral law; and then I say that people fell more than in the fall of their population. Their population has diminished; but they, unhappily, have deteriorated in political character, and have not now the same noble elements of political life by which they were once commended.

Sir, I might say more on the question, whether any power can be derived under this Enabling Act. I think, however, that has been enough discussed. All must see, that, whatever its original character, whatever powers may have proceeded from it, they have all been exhausted, and the act has practically expired; it is *functus officio*, — it is a dead act; and this Territory is no more authorized to proceed under it than any other Territory is authorized to proceed under it. It is not in any respect applicable. It has ceased to have any legislative potentiality. Therefore, Sir, whatever this people have undertaken to do they have done without any Enabling Act; they are a voluntary body, proceeding by voluntary action, without previous sanction of Congress, and all that they do is submitted to the judgment of Congress, which is in no respect bound or compromised in the least by any previous proceeding. We approach the question now precisely as if there had been no Enabling Act, — as if the name of Colorado (a pleasant name I trust it may be hereafter in these Halls) had never before found echo here. The whole question is absolutely new from beginning to end; and we must approach it under all the responsibilities of our position, looking at it on the evidence, according to the facts, in order to determine whether now, at this moment, under these circumstances, we shall be justified in ceding to this community all these great powers.

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There was one argument of the Senator from Kansas [Mr. LANE] which was an appeal to us personally, — to my excellent friend from Ohio, to my excellent colleague, and to other Senators who had been here in other days, when Kansas was in danger, and in that

"well-foughten field
We kept together in our chivalry."

Sir, it is the pride of my life that at that time I was able to do something for the State which the Senator represents on this floor. I did it sincerely, honestly believing it my duty at the time, because I saw well the peril of dependent condition, and that it could be saved only by the interference of Congress, the swiftest intervention, which would not brook delay. Therefore, Sir, for the sake of peace, and as I would succor a fellow-man in agony, I exerted myself in every way to invest Kansas with all the privileges and self-protecting powers of a State. The case was peculiar and exceptional; it was also historic. It cannot be cited as a precedent now. As well cite what you do to save a drowning man just sinking for the last time, as a proper precedent for conduct in daily life. The case of Colorado is to be met on the facts; it is not an exceptional case; it is a simple case. Meet it, therefore, on the facts and on its simplicity.

At the suggestion of others, and in order to reach an immediate vote on the bill, Mr. Sumner withdrew his amendment.

On the question of its engrossment for a third reading, the bill was rejected, — Yeas 14, Nays 21.

March 14th, Mr. Wilson, of Massachusetts, who had voted with the majority, moved that the Senate reconsider the vote rejecting the bill, thus keeping the question open for further debate.

April 17th, the motion to reconsider was taken up during the morn-

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ing hour, when Mr. Sumner declared his continued opposition to the proposed State, and his sense of the mistake the Senate would make in reconsidering the late vote. In the course of these remarks, he said: —

I HOPE, therefore, that the Senate will not proceed to reconsider the vote which, to their honor, they have already recorded. They did well, when, after two days' debate, by a large vote, they deliberately refused to receive this Territory into the Union. Has anything occurred since to cause a reversal of opinion? Is there any new evidence? Are there new facts? Is there anything which can change your responsibilities, or make you see your duty in a different light? Has that constitution been amended? Has the word "white" been struck out? Why, Sir, at this moment the most important practical question before the country is, whether we shall allow the word "white" in the constitutions of the late Rebel States. Sir, with what just weight can you insist that this word shall be excluded from those constitutions, when you deliberately receive into the Union a new State openly announcing this rule of exclusion? I say, therefore, for the sake of my country, for the sake of public tranquillity, and in loyalty to those fundamental principles on which so much depends, and which, whether as Senator or citizen, I can never forget, I appeal to you, Sir, and to my associates on this floor, not to allow this question to be revived. Let Colorado wait at least until she recognizes the Declaration of Independence.

The morning hour expired as Mr. Sumner finished, and the question was dropped.

April 19th, Mr. Wilson moved that the Senate proceed with the motion to reconsider. Mr. Sumner then said: —

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MR. PRESIDENT, I hope the Senate will not proceed with that question to-day, and I assign two reasons. The first is, that, looking about the Senate, I see many absent who ought to be here. The second is, that this day, here in the national capital, is dedicated to the cause of human freedom and human rights, — the great cause of Emancipation. The streets to-day are filled with a happy people, emancipated by Act of Congress, and now celebrating the anniversary of their rights. It is, Sir, no proper day to recognize human inequality by receiving into the Union a community which chooses to appear here with a constitution setting at defiance the fundamental principles of the Declaration of Independence. Sir, this is no day for the consideration of that question. I insist that this day shall be kept sacred to human rights, — not be given up to their overthrow.

I may be told, Sir, that there are but ninety colored persons in this distant Territory, — only ninety to be sacrificed. If there were but one, that would be enough to justify my opposition. Out of those ninety, more than seventy-five have borne arms for you in the late war; and yet these people are now positively disfranchised in the constitution it is proposed to recognize. Sir, if you choose to do it, if you do not hesitate to insult the public sentiment of the age by such an act, do not do it to-day.

Mr. Wilson followed. He said, that, on the 3d day of March, 1863, his colleague voted that the people of Colorado should be authorized to frame a constitution; that he did not then propose that she should not make the offensive discrimination; that he never suggested it; that he did not dream of it; that he did not think it fair play to refuse the application of this Territory on account of a distinction they

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have made, when we imposed no conditions on them, and did not even suggest any.

Mr. Lane, of Indiana, said: "I believe that there is no instance in the whole history of the admission of new States where that word 'white' has not been the prefix to the qualification for holding office and voting."

MR. SUMNER. Is it not time to begin?

MR. LANE. It is perhaps time to begin; but we should have begun when we passed the Enabling Act, and the vigilance of the Senator from Massachusetts should not have slumbered on that occasion.

MR. SUMNER. It did not, as I shall show you presently.

Mr. Trumbull also insisted that in good faith Congress was committed to the people of Colorado by the Enabling Act. In the course of reply, Mr. Sumner said: —

. . . . . .

What I did say, however, was this: that on that occasion the suggestion was made, which my excellent colleague made to-day, that I was guilty of inconsistency; and I said that then and there I answered that argument. My colleague, not being here, did not hear the answer, and therefore to-day, without knowing the facts, he has revived the charge.

. . . . . .

I showed you, that, when the Enabling Act was pending in the Senate, all persons, without distinction of color, were authorized to vote. That was my answer before; it is my answer now. Therefore, Sir, do I say that I did not vote with any idea that there could be a discrimination founded on color; on the contrary, I voted with the positive conviction that all possibility of such discrimination was excluded, — and, still further, knowing that this Act contained words in themselves an antidote to any such wrong: —

"The constitution, when formed, shall be republican, and

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not repugnant to the Constitution of the United States and the principles of the Declaration of Independence."

Now, Sir, I insist that the constitution presented to us is not republican; and I further insist that it is inconsistent with the Declaration of Independence. My excellent colleague will certainly not maintain the contrary. He will not say that a constitution which undertakes to exclude persons from equal rights on account of color is consistent with the fundamental principles of the Declaration of Independence; and that, Sir, is the very requirement of the Enabling Act.

. . . . .

I think it ought not to be proceeded with at all. I think the cause of human rights suffers every moment you give to this question. But I began this morning by simply opposing the consideration of it to-day. If you choose to make a sacrifice of human rights, do it on some other day than this.

After interchange of opinion, the question was postponed till the next Tuesday, the 24th instant, when it was made the special order.

April 24th, the debate was renewed, when Mr. Sumner said: —

MR. PRESIDENT, on the 13th of March last, after a debate of two days, the Senate rejected a bill for the admission of Colorado as a State into the Union. This was by a vote of 21 nays to 14 yeas, being a majority of 7. And now, after an interval of more than a month, a motion is brought forward to reconsider that vote. An attempt is made to revive a question which at that time seemed buried. Of course, those who press this motion have a right to do so, if they are satisfied in their minds that it ought to be pressed. I do not

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complain of them. But I meet the attempt on the threshold. I do not content myself with waiting to another stage and entering into the discussion after we have allowed the reconsideration. I oppose the reconsideration. I insist that this subject, once closed by such a majority, and on such good grounds, shall not again be opened here.

Sir, the proposition is nothing less than the admission of a State into this Union. I need not remind you that in other days no such attempt could be made in this Chamber without exciting great and wide-spread interest. Some of the most remarkable debates in the Senate have been on such occasions. The proposition has two aspects: first, as it concerns the people in the Territory itself, who, I submit, are not prepared to assume the responsibilities of a State government; and, secondly, as it concerns the other States in the Union, who, I submit also, ought not to be obliged at this moment to receive this community into full equality as a State.

Formerly I felt it my duty to remind you of the position, the responsibilities, the powers, and the prerogatives of a State in this Union. I held up before you what you would convey to this small community, if you invested it with the character of a State. I showed you that you would impart to it a full equality in this Chamber with the largest States in the Union, — with New York, with Pennsylvania, with Ohio, with Massachusetts, — and that, in the exercise of this constitutional equality, Senators from this small community, on all questions of legislation, of diplomacy, and of appointments, might counterbalance the Senators of one of these large States. Assuming that this small com-

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munity was already a State in the Union, I had no criticism to make on that equality of power; but I did present to you as an unanswerable argument, that a community so small in the proper attributes of a State should not be admitted to the enjoyment of that high equality.

Permit me to say, Sir, that you cannot adequately consider this case without giving some attention to the present condition of the country. We are, happily, at the close of a long, bloody, and most expensive war, throughout which there was one question dominating all others: it was the question of justice to the colored race. And now, Sir, that the war is closed, and our soldiers are no longer in the tented field, that same question enters perpetually into your debates, challenging decision; it is before you at every stage of legislation. With this question staring you in the face, what do we behold? A small community in a remote part of the country, petty in population, — even according to the statements of its friends not amounting in numbers to more than twenty-five or thirty thousand people, according to the statements of others even as few in numbers as ten or fifteen thousand, — with agricultural products already diminishing, with mining resources that during the last two or three years have been constantly failing, with accounts at the Post-Office which during the past year have been reduced, — we have this small community coming forward and asking admission to equality as a State in the Union, with a constitution that tramples on human rights. This new candidate, pressing for recognition, holds up a constitution excluding all persons from the electoral franchise who are not white; and

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the question before you is, whether this small body, so slender in every respect, of such inferior condition, and with a declaration of human inequality in its constitution, shall be admitted to the equality of States in this Union. You are not obliged to admit it. Your discretion is ample. The language of the Constitution is plain: "New States *may* be admitted into this Union," — not must, but "may." You may admit, or you may reject. Therefore, when called to act, you must exercise your discretion. You cannot decline to exercise it. You must bring your judgment to bear upon the case; you must consider well all the facts and all the elements which enter into the civilization of this candidate community; you must consider, of course, its population, its resources, and also the character of its constitution. In doing so, you can have no feeling except of kindness and sympathy for the people there. God knows that I wish them well from the bottom of my heart; there is no aspiration which I do not offer for their welfare; but on this occasion we must consider the requirements of duty. And here the way is clear.

With these few words of introduction, I arrive at this proposition: that such a community as now exists in Colorado, deficient in population, declining already in agriculture, failing also in mineral resources, and with a constitution which sets at defiance the first principle of human rights, should not at this moment be recognized as a State of the Union. Mark me, if you please, — I say at this moment, and under these circumstances; for, whatever might be done at another time and under other circumstances, I insist that this thing is impossible now, when by every obligation we

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are solemnly bound to maintain the rights of the colored race. Oh, no! we cannot give the hand to such a community, so inferior in population and resources, with a constitution audaciously denying those rights.

Thus much, Sir, I have to say by way of introduction; all this simply opens in one word the magnitude of the question, and the general principles which govern it; but before I sit down it will be my duty to consider with some minuteness the actual condition and prospects of this Territory.

. . . . .

Sir, consider, that, when this Territorial Act was passed, in March, 1864, the country was still struggling in that terrible war involving the great question of justice to the colored race. At that moment, this secluded people, already aspiring to be a State, undertook to put their feet upon the colored population beginning to gather under their jurisdiction. We are told they are few in number, — perhaps a hundred; yet out of that hundred are some seventy who promptly went forth as soldiers to do battle for your flag, but, returning to their homes, they found the franchise they had enjoyed taken from them, — that they who had perilled life to save the Republic and to aid in establishing the rights of all, when once more at their own firesides, were despoiled of their own. Sir, am I wrong, when I say that here was retrogression in republican principles, — that here was departure from those fundamental truths essential to our Government? It was, I say, departure and retrogression, — because this community had begun right. It began by recognizing these truths; but, as if blasted by some evil genius, the same failure that attended it in population, in agriculture, in

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mining, and in other respects, descended upon its moral sense.

I do not use too strong language. I say it was a fall, when this community, which had solemnly enacted justice, after the lapse of three years reversed its own decree, and solemnly enacted injustice. There it stands on the statute-book. You must recognize it. You cannot avoid it. You cannot be insensible to such a thing. It is a fact in the history of this Territory. No other Territory in our national history has ever been thus guilty. No other Territory which has risen to the height of justice has ever descended again so low. No other Territory which has recognized the rights of man has afterward undertaken to overthrow them.

The Governor of the Territory, in the message which I hold in my hand, speaking of this question, says, in language which does him honor: "It seems incredible, and, were it not for the record, it would be incredible, that such a measure could have been adopted at such a time."

The Governor, in the same message, shows that these same colored men, while despoiled of the elective franchise, are nevertheless compelled by taxation to support the public schools, from which their children are excluded. Some of the more prosperous, in order to secure education for their children, have sent them to distant parts of the country, to repair the wrong done by this churlish and unjust community. All this is set forth by the Governor in his formal message. He then adds: —

"I do not propose in this connection to discuss the question of equality of race, about which so many words and so

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much labor have been wasted; but I submit without argument the fact that the colored people in Denver and various parts of the Territory are taxed to pay for educating white children, while their own children are excluded from the public schools; and your action will determine how long the humiliating spectacle shall be presented to the world."[1]

Could anything be more flagrant? Yet this community now appeals for your favor and countenance and welcome as a State!

I have quoted from the message of the Governor. I cite another authority, being a telegraphic despatch from a colored citizen of Colorado, which has travelled over the wires a very long distance.

"DENVER CITY, COLORADO, January 15, 1866.

"The law adopted by the Territorial Legislature in 1861 allowed all persons over twenty-one to vote, without distinction of color. The law passed in 1864, signed by Governor Evans, deprived colored citizens of the right, at the very time when appealing to them to help save the country. The admission of Colorado under her present constitution makes that law permanent. If not admitted now, this can be corrected.

"WILLIAM J. HARDING,
A colored citizen."

After adducing additional evidence, Mr. Sumner proceeded to consider the obligations upon Congress from the Enabling Act, and here he said: —

If I understand the argument, it is, that Congress, by a statute, pledged itself in advance to admit this community as a State into the Union; that we are bound by such statute, so that we cannot escape the

[1] Special Message of Governor Cummings to the Legislative Assembly, Colorado Territory, January 23, 1866, pp. 2, 3.

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obligation; that, in short, we are tied up by our own statute. This is a strong assumption; but I believe it is an accurate statement of the position of the other side.

Now, Sir, I think I can easily show that here is a great mistake. I may remind you that the President, to whom the question was naturally submitted, has expressly stated in a message to the Senate that in his opinion the new constitution was not formed in pursuance of the Enabling Act.

. . . . . .

I have said that the Enabling Act had expired. These parties can claim nothing under it. It is like an obsolete statute, which we read in the statute-book, but never adduce for authority. It stands as a monument, showing what Congress required, and showing also what this community failed to perform. In adducing it, you bring authority against the present pretension; for you show clearly that the pretension had no foundation in the statute.

But, Sir, even assuming that the Enabling Act was in a condition to be employed for the organization of this Territory, — which I claim it was not, — then it is my duty to go further, and show you that these parties, as the colored telegraphic correspondent from Denver alleges, did not in any respect comply with the Enabling Act.[1] Why, Sir? By the Enabling Act the Convention was to be called by the Governor. But it was called by the executive committees of political parties, being so many caucuses. Such was the origin of the convention to give you a new State. What author-

[1] Despatch, January 18, 1866: Congressional Globe, 39th Cong. 1st Sess., p. 2139.

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ity for that do you find in the Enabling Act? Be good enough to point out a single word to justify any such transaction. And yet we are gravely told that this strange political hocus-pocus was by virtue of the Enabling Act, — as if in every respect it was not plainly inconsistent with the Act.

But the Enabling Act declares that "the constitution, when formed, shall be republican." This is a fundamental condition. And here I repeat what I have so often said, but which at this hour cannot be too often sounded in the ears of the Senate. I affirm with confidence, that a constitution which denies the first principle of human rights cannot be republican in form. Do you answer, that there are States having such constitutions? Then I reply: We are not called to sit in judgment on those constitutions; we have no power to revise them; we are not to vote upon them; but we are called to sit in judgment upon this constitution, to revise it, and to vote upon it. You are now to declare by your votes whether this constitution which tramples upon the principle of human equality is republican in form. I insist that it is not.

Still further, this Enabling Act declares that "the constitution shall not be repugnant to the principles of the Declaration of Independence." Need I ask you, What is the first principle of the Declaration of Independence? Is it not, in solemn words, that "all men are created equal," and that all just government stands on "the consent of the governed"? Does any one deny that these are the words? You know them by heart; your children learn them in their earliest infancy; and whatever is done in the Territory is to be brought to this great ordinance, as to a touchstone.

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Such is the requirement of the Enabling Act. Therefore, even if you argue that the Enabling Act is authority for this proceeding, then do I reply, that this community has not in any respect brought itself within its terms. It has not complied with its requirements of principle or of proceeding. The proceedings were not according to the Enabling Act; the principles are in defiance of the Enabling Act. Tried by either standard, the whole effort must miserably fail.

Mr. Sumner was here interrupted by Mr. Trumbull, who, quoting from the Territorial election law of 1861 a provision requiring voters to be citizens, remarked, that, while he would not be understood as saying that in his opinion a colored person is not a citizen, such was the understanding in Colorado. Mr. Sumner replied: —

The Governor of the Territory, whose message I hold in my hand, does not put upon the statute the interpretation the Senator does.[1] I have great respect for the opinion of my friend, as he knows; but on this matter I submit, that the Governor of the Territory, on the spot, in a formal communication to the Legislature, is a better authority even than my honorable friend.

MR. TRUMBULL. Better than the statute?

MR. SUMNER. I am coming to that. The statute enumerates first in the class of voters citizens of the United States; and my honorable friend himself is obliged to confess that in his opinion colored persons are citizens of the United States. He does not doubt it. If he did, it would be my duty to remind him of an opinion by the Attorney-General of the United States, in 1862, more than a year prior to the Enabling Act,

[1] See, *ante*, p. 353.

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declaring colored persons citizens of the United States.[1] I refer to this opinion with something more than respect: I refer to it with reverence. I do think, humbly speaking, that this opinion was one of the most remarkable and one of the grandest acts in the history of the late Administration. I do not doubt that hereafter, when the annals of these times are written, the historian will dwell with honest pride upon that admirable document, where one man reversed the whole policy of the Nation, fixing the law of this country forever, — that all colored persons are citizens of the United States. And that was the law of Colorado. The Senator from Illinois does not doubt it. Therefore, when the Territorial Legislature added the words "citizens of the United States," it did not alter the case by a hair's breadth: all persons could vote, without distinction of color. The Senator is informed that no colored persons did vote. I have been informed the contrary. But I insist, that, beyond all question, by the Territorial statute colored persons were entitled to vote.

. . . . . .

Mr. President, such are the facts against the admission of Colorado as a State into this Union. I do not see how you can admit it, without, in the first place, injustice to its own population, at this moment unable to bear the burdens of a State government; secondly, without injustice to the other States, which ought not to find themselves "paired" in this Chamber by two Senators from this small community; and, in the third place, without sacrificing a principle which at this moment is of incalculable importance to the peace of the country.

[1] Opinion of Attorney-General Bates, November 29, 1862: Official Opinions of the Attorneys General of the United States, Vol. X. pp. 382, seqq.

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In other times we have heard the cry, *No more Slave States!* There is kindred cry which must be ours,— *No more States with inequality of rights!* Against all this I catch a whisper, not an argument. It is breathed that we need two more votes on this floor. Sir, there is something that you need more than two more votes. It is constancy in the support of that great principle so essential to the harmony of the Republic. Better far than any number of votes will be loyalty to this commanding cause. Tell me not that it is expedient to create two more votes in this Chamber. Nothing can be expedient that is not right. If I were now about to pronounce the last words that I could ever utter in this Chamber, I would say to you, Senators, do not forget that right is always the highest expediency. You can never sacrifice the right without suffering for it.

April 25th, the question was taken on Mr. Wilson's motion to reconsider, and was carried, — Yeas 19, Nays 13. The bill was again before the Senate.

Mr. Sumner then moved his proviso, that the Act should not take effect except upon the fundamental condition that within the State there should be no denial of the elective franchise or of any other rights on account of color or race, which was lost, — Yeas 7, Nays 27.

The bill was then passed by the Senate, — Yeas 19, Nays 13. Mr. Edmunds, of Vermont, Mr. Foster, of Connecticut, Mr. Grimes, of Iowa, Mr. Morgan, of New York, Mr. Poland, of Vermont, and Mr. Sumner were the only Republicans voting in the negative.

May 3d, the bill passed the House of Representatives, — Yeas 81, Nays 57, — among the latter Mr. Stevens, — and was duly presented to the President for his signature.

May 16th, the bill was returned to the Senate, with the objections of the President to its becoming a law. On motion of Mr. Wade, of Ohio, the message was laid on the table. May 21st, on motion of Mr. Hendricks, of Indiana, it was taken up and made the special order for May 29th. On this motion, Mr. Sumner, after discussing the order of business, remarked: —

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I HAVE said enough in answer to observations on the order of business by Senators who have preceded me; but there seems to have been a disposition to open the main question. Senators have expressed opinions with more or less fulness on that. I shall not follow them. This is not the time for such a discussion. That time may come. It has already been in this Chamber, and then I had ample opportunity to say what I chose. I may deem it proper to take another opportunity; but I am in no haste. I have no disposition to press the matter.

I cannot take my seat, however, without one remark, in reply to my friend from Ohio. He says that he is for the admission of Colorado now, notwithstanding the veto of the President. I rejoin, that I am against the admission of Colorado now, with or without the veto of the President. If alone, I mean to insist always, that, from this time forward, no State shall be received into the Union with a constitution disavowing the first principle of the Declaration of Independence; and I shall take advantage of every opportunity to uphold that principle, whether given me by a Senator on this floor or by the President of the United States.

The veto was never considered, and the effort for the admission of Colorado expired for that session. Had the veto been considered, Mr. Sumner would have said: —

MONTHS have passed since the application of Colorado was presented to Congress, with a constitution disregarding that vital principle which constitutes the essential element of republican government, without which a republican government is a name and nothing more. For months representatives of Colorado have

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struggled to triumph over this benign principle. Meanwhile the popular voice has been heard, sounding in the ears of members of Congress, and still the efforts of these representatives of Colorado are continued. I regret this much. I regret that they did not return home and crown their labors by making the new State an example to the country.

On this occasion I shall sustain the veto of the President. I must do this, because I agree with him, that Colorado should not now be admitted as a State.

There are reasons assigned by the President which are applicable and sufficient. There is at least one other assigned by him which is inapplicable, and, of course, insufficient. When he objects to the reception of a new State with so small a population as Colorado, to exercise equal power, legislative, diplomatic, and executive, with New York, in this Chamber, — and when again he objects to this new State on the ground that the people there are not yet ripe and ready for the responsibilities of a State government, — clearly, in these two cases he has reason on his side. All that he says is at once applicable and sufficient. But I must be pardoned, if I cannot adopt his other reason, — that we should not undertake to admit new States while our late Rebel States are still unrepresented in Congress. This reason is obviously inapplicable, and, of course, insufficient. He might as well object to the validity of elections because criminals have not been let out of the prisons and penitentiaries to vote. States hardly yet washed clean from the blood of rebellion cannot expect to be received instantly into the great copartnership of the National Government. For the present, the business must be done by the loyal members.

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There is another reason, at once applicable and sufficient, which the President has forgotten to assign. That he should forget it may seem strange, when we consider, that, on an important occasion in Tennessee, standing on the steps of the Capitol, he openly announced himself as the "Moses" of an oppressed race. But, Sir, are we not told by the poet that the soul can reach heights which it cannot keep? Clearly, in this utterance, so grandiose in promise, our President reached heights he has not been able to keep. He is mortal, and the early inspiration has passed from him. Had it been otherwise, he would not have forgotten to rebuke this young Colorado coming forward with a constitution that openly sets at nought that equality of rights which attaches to the loyal citizens of an oppressed race. Here is reason enough for the rejection. As in times past there has been the cry, "No more Slave States!" the cry now must be, "No more States with the word 'white'!" I trust the Territories west of the Mississippi will take notice, and govern themselves accordingly.

At the next session, another bill was promptly introduced by Mr. Wade, and then reported by him from the Committee on Territories. Meanwhile a bill for the admission of Nebraska was taken up, and, after a protracted discussion, in which Mr. Sumner took part, that Territory was admitted as a State, on the fundamental condition of Equal Rights.[1]

January 9, 1867, immediately on the passage of the Nebraska Bill in the Senate, the bill for the admission of Colorado was taken up. The proviso requiring equal rights as a fundamental condition was adopted, — Yeas 21, Nays 18, — and the bill then passed the Senate, — Yeas 23, Nays 11, — Mr. Sumner voting in the affirmative.

[1] *Post*, p. 523.

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January 15th, in the House of Representatives, the proviso adopted by the Senate was changed so as to require the assent of the State Legislature, —Yeas 84, Nays 65, — and the bill then passed the House, — Yeas 90, Nays 60. The Senate concurred, but President Johnson returned the bill with his objections.

March 1st, on the question of the passage of the bill, notwithstanding the objections of the President, the vote stood, Yeas 29, Nays 19. Two thirds not having voted for the bill, it did not become a law. Nebraska was more fortunate.

Although Colorado failed to be admitted as a State, the long and earnest debate was not without result. The power of Congress to require Equal Rights as a fundamental condition was affirmed.

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OPPOSITION TO THE CONSTITUTIONAL AMENDMENT ON THE BASIS OF REPRESENTATION.

LETTER TO THE BOSTON DAILY ADVERTISER, MARCH 15, 1866.

SENATE CHAMBER, March 15, 1866.

TO THE EDITORS OF THE BOSTON DAILY ADVERTISER.

GENTLEMEN, — My attention has been called to an editorial article in your paper,[1] where you say that Mr. Sumner "aided in defeating" the proposed Constitutional Amendment, "because in his opinion it fell short of what was needed."

Permit me to say that this does not state my position accurately.

My objection to the proposed Amendment was twofold: first, that it carried into the Constitution by express words the idea of inequality of rights, which, in my opinion, would be a defilement of the text; and, secondly, that it lent the sanction of the Constitution to a wholesale disfranchisement on account of race or color. Thus far, nothing of the kind had been allowed to find place in its text. To my mind it was clear that nothing of the kind could rightly be allowed to find place in its text.

You will see, therefore, that my opposition was not because the proposed Amendment "fell short of what

[1] March 12, 1866.

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was needed," — although this was too true, — but because it did what in my judgment ought not to be done. Its objectionable character became more apparent, when it was considered that it did this at a crisis when complete justice to the freedmen was at once the prompting of gratitude and the requirement of necessity for the sake of national peace and the good name of the Republic. But the special objection to the proposed Amendment was not that it "fell short," but that it was bad in itself. It is sometimes said, "Half a loaf is better than no bread," and this has been called "half a loaf." But nobody would accept "half a loaf," if it were poisoned. Here was a poisonous ingredient. The proposition to found representation on voters, besides being more surely effective to the same end, had no poison in it.

Others did not see the proposed Amendment as I did. Had they seen it so, they must have voted against it. But, seeing it as I did, I think you will agree that I could not hesitate in opposition to it.

I do not write now for any purpose of controversy, but simply that my position may not be misunderstood.

I am, Gentlemen, your faithful servant,

CHARLES SUMNER.

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MAJORITY OR PLURALITY IN THE ELECTION OF SENATORS.

SPEECH IN THE SENATE, ON THE CONTESTED ELECTION OF HON. JOHN P. STOCKTON, OF NEW JERSEY, MARCH 23, 1866.

THE seat of Hon. John P. Stockton, as Senator from New Jersey, was contested at this session of the Senate, on the ground of irregularity in the election. The Judiciary Committee, by their Chairman, Mr. Trumbull, reported that he "was duly elected, and is entitled to his seat," and in their report stated the case: —

"The only question involved in the decision of Mr. Stockton's right to a seat is, whether an election by a plurality of votes of the members of the Legislature of New Jersey, in joint meeting assembled, in pursuance of a rule adopted by the joint meeting itself, is valid. The protestants insist that it is not; and they deny Mr. Stockton's right to a seat, because, as they say, he was not appointed by a majority of the votes of the joint meeting of the Legislature."

The debate on this question showed earnestness and feeling. Mr. Fessenden, of Maine, used strong language: "I was exceedingly surprised — more so, I will say, than I ever was before, at a judicial decision, in my life — at the opinion to which the Committee on the Judiciary arrived in relation to this matter." Mr. Trumbull defended the report. Mr. Sumner followed.

MR. PRESIDENT, — When the Senator from Illinois rose to speak, I had made up my mind to say nothing in this debate; but topics have been introduced by him which I am unwilling should pass without notice.

The Senator did not disguise that the case is with-

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out a precedent in the history of the Senate. Never before has a Senator appeared in this Chamber with the credentials of a minority. And I venture to say further, that the rule of a majority has the constant consecration of history in the proceedings of parliamentary or electoral bodies. It is the rule of the House of Commons in the choice of Speaker; and this is the most important precedent for us, for our Parliamentary Law is derived from England. But it antedates the English Parliament. The oldest electoral body in the world is the Conclave of Cardinals; but who has heard that a Pope was ever elected by a minority? I ask your attention to this example, that you may see how the rule of the minority is constantly rejected, notwithstanding temptation, inducement, and pressure to adopt it. There have been many contested elections, during which the Cardinals, separated from the world, each in a small apartment or cell of the Vatican or the Palace of the Quirinal, have been imprisoned like a jury, sometimes for months, waiting for the requisite majority. They did not undertake to change the rule, and set up the will of a minority. There was Lambertini, who shone as Pope Benedict the Fourteenth, conspicuous as statesman and patron of letters, who was not chosen until after six months' ineffectual efforts. Such instances stand like so many pillars, and I refer to them now as proper to guide your conduct.

The question before us is of law, and nothing else. It is not a question of politics or of sentiment, except so far as these enter into the determination of law. It is a question for reason alone.

It lies in a nutshell. A brief text of the National

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Constitution, and another brief text of a local statute, are all that need be considered.

The National Constitution provides as follows: —

"The Senate of the United States shall be composed of two Senators from each State, chosen by the *Legislature* thereof."

"The times, places, and *manner of holding elections for Senators* and Representatives shall be *prescribed* in each State by the *Legislature* thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

In carrying out this provision, the Legislature of New Jersey, by a statute passed April 10, 1846, and copied from a statute passed in 1790, enacted as follows: —

"Senators of the United States on the part of this State shall be appointed *by the Senate and General Assembly of this State in joint meeting assembled.*"

In pursuance of these two provisions of National Constitution and of local statute, the Legislature of New Jersey has undertaken to elect a Senator. From the statement of the case, it appears, that, on a certain day, the two Houses assembled "in joint meeting"; that they proceeded to act on a resolution declaring that "any candidate receiving a *plurality* of votes of the members present shall be declared duly elected"; that this resolution was adopted by forty-one votes out of eighty-one, — eleven Senators, being a majority of the Senate, and thirty members of the House, being less than a majority of that body, voting for it; that, in pursuance of this resolution, Mr. Stockton was declared Senator, although he did not receive a majority of the votes of either House or of the joint meeting. In

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point of fact, he received forty votes, of which ten were from Senators and thirty from members of the Assembly, while against him were forty-one votes; and the question you are to decide is on the legality of this election.

The National Constitution is the original and highest source of light on the question. Here we find, that, in the absence of any regulations from Congress, the manner of choosing a Senator is referred to the State Legislature. The Senator is to be chosen by the *Legislature*, which is to *prescribe*, among other things, the *manner* of holding the election. Whatever the State can do must be derived from this source, nor more nor less. The choice is by the Legislature, according to a manner prescribed by the Legislature.

The National Constitution does not undertake to define a State Legislature or its forms of proceeding. This is left to the State itself. Notoriously, these Legislatures were modelled on the Colonial Legislatures preceding them, which had been modelled on the Parliament of the mother country. As a general rule, there were two Chambers, upper and lower; but this was not universal. In Georgia and Pennsylvania there was for a while only a single Chamber, constituting the Legislature. I mention this to show how completely the State itself was left to determine the conditions of its Legislature. But the State speaks through the State Constitution, which fixes these conditions. Where the Constitution is silent, can the Legislature itself venture to speak?

Repairing to the Constitution of New Jersey, we find it providing that "the *legislative power* shall be vested in a Senate and General Assembly"; that these bodies

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shall meet and organize separately"; that "all bills and joint resolutions shall be read three times in each House"; and "no bill or joint resolution shall pass, unless there be a *majority* of all the members of each body personally present and agreeing thereto." Such is the definition of a Legislature, and such are the forms of legislative proceedings prescribed by the Constitution of New Jersey.

The statute of New Jersey, to which I have referred as framed in 1790, was entitled "An Act to *prescribe the manner* of appointing Senators of the United States and Electors of the President and Vice-President of the United States on the part of this State." This was in pursuance of the National Constitution. It was the execution, on the part of the State, of the power with which it was invested to prescribe the manner of electing Senators.

I have no purpose of raising any question with regard to the validity of this statute prescribing the election of Senators *in joint meeting*. Constant usage is in its favor; and yet I have no hesitation in saying that it has always seemed to me inconsistent with a just construction of the National Constitution. Senators are to be "chosen by the Legislature"; but the Legislature is composed of two separate bodies, defined by the State Constitution. Senators, therefore, should be chosen by the two bodies separately. So it has always seemed to me, and the practice of my own State is accordingly. In this opinion I am sustained by so eminent an authority as Chancellor Kent, who, after setting forth the usage, proceeds to express his dissent from it as a just construction of the National Constitution. His language is explicit: —

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"I should think, if the question was a new one, that, when the Constitution directed that the Senators should be chosen by *the Legislature*, it meant, not the members of the Legislature *per capita*, but the Legislature in the true technical sense, being the two Houses acting in their separate and organized capacities, with the ordinary constitutional right of negative on each other's proceedings." [1]

It is difficult to resist this conclusion, especially when it is considered that in any other way the smaller body is actually swamped by the larger. In a joint meeting the Senate loses its relative power. I adduce this, not for criticism, but only for illustration. Even admitting that the received usage of choosing Senators in joint meeting is consistent with the National Constitution, it is clear that it should not be extended; and this is the precise question before us. Contrary to all usage or precedent, and without any direct sanction in the Constitution or statutes of New Jersey, the Legislature has undertaken in joint meeting, not only to choose a Senator, but also to prescribe the manner of choosing him. Finding that it could not choose according to existing usage, it adopted the resolution declaring that the election should be determined by a minority of votes instead of a majority.

In this resolution two questions arise: first, can the Legislature itself, by legislative act, substitute a minority for a majority in the election of Senators, and thus set aside a great and traditional principle? and, secondly, can it do this in a "joint meeting," without any previous legislative act? It is enough for the present occasion, if I show, that, whatever may be the powers of the Legislature by legislative act, it can have

[1] Commentaries on American Law (4th edit.), Vol. I. p. 226.

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no such extraordinary power in the questionable assembly known as "joint meeting." But we shall better understand the second question, after considering the first.

To what extent can a Legislature substitute a minority for a majority in any of its proceedings? In most cases the question is controlled by the express language of the State Constitution; but I present the question now independently of any State Constitution.

In considering the power of the Legislature, it is important to put aside any influence that may be attributed to the unquestioned usage of choosing Representatives and other officers by plurality of votes. Because the people choose by plurality, it does not follow that a Legislature may. From time immemorial, the rule in the two cases has been different, unless we except the New England States, where, until recently, even popular elections were by a majority. But the origin of the practice in New England testifies to the rule.

It is proper for us to interrogate the country from which our institutions are derived, for the origin of the rule. Indeed, where a word is used in the Constitution having a previous signification or character in the institutions of England, we cannot err, if we consider its import there. I think we do this habitually. Mr. Wirt, in his masterly argument on the impeachment of Judge Peck, develops this idea.

"The Constitution secures the trial by jury. Where do you get the meaning of *a trial by jury?* Certainly not from the Civil or Canon Law, or the Law of Nations. It is peculiar to the Common Law; and to the Common Law, therefore, the Constitution itself refers you for a description and

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explanation of this high privilege, *the trial by jury*, and *the mode of proceeding* in those trials. . . . . The very name by which it is called into being authorizes it to look at once to the English archetypes for its government."[1]

Following this statement, so clearly expressed, the words "Legislature" and "holding elections," in the National Constitution, which belonged to the political system of England, may be explained by that system, — so, at least, that in case of doubt we shall find light in this quarter.

Now, from the beginning, it appears that in England there have been two different rules with regard to elections by the legislature and elections by the people. Elections by the legislature, like legislative acts, have been by majority; elections by the people for Parliament have been by plurality. This distinction is found throughout English history.

The House of Commons chooses its Speaker by majority. It may be said, also, that it chooses the Ministers of the Crown in the same way, because the fate of a cabinet depends upon a majority. In short, whatever it does, unless it be the nomination of committees, is by majority. It is only through majority that it can act. The House of Commons itself is found in the majority of its members, — never in a minority.

On the other hand, members of Parliament are chosen by plurality. No reason is assigned for the difference; but it may be found, perhaps, in two considerations: first, the superior convenience, amounting almost to necessity, of choosing members of Parliament in this way; and, secondly, the fact that popular bodies were not em-

[1] Stansbury, Report of the Trial of Judge Peck, Appendix, p. 499.

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braced by the Law of Corporations, which establishes the rule of the majority.

Here I adduce the authority of Mr. Cushing, in his Parliamentary Law, in the very passage cited by the Senator from Illinois: —

"At the time of the first settlement and colonization of the United States, the elections of members of Parliament in England were conducted upon the principle of plurality, which also prevailed in all other elections in which the electors were at liberty to select their candidates from an indefinite number of qualified persons. Such has been, and still continues to be, the Common Law of England; and such is the present practice in that country in all elections." [1]

It will be perceived that this statement is with reference to popular elections, and not elections by corporate or legislative bodies. So far as it goes, it is explicit. But pardon me, if I say that the Senator from Illinois has misunderstood it. Had he examined it carefully, he would have seen that it had no bearing on the present case. Nobody questions the plurality rule in the election of members of Congress, although few, perhaps, have considered how it came into existence. Mr. Cushing, whom the Senator cites, explains it, and in a way to furnish no authority for a minority instead of a majority in a legislative body. The rule prevailed in England. The colonies of Virginia and New York adopted it. From these, as they became States, it gradually extended throughout the country. A different rule was carried to New England by the Puritan Fathers. Even popular elections were by the

[1] Law and Practice of Legislative Assemblies in the United States (2d edit.), § 126, p. 47.

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rule of the majority, as is explained by the same learned authority.

"The charter of the Colony of the Massachusetts Bay being that of a trading company, and not municipal in its character, the officers of the Colony were originally chosen at general meetings of the whole body of freemen, precisely as at the present day the directors of a business corporation, a bank, for example, are chosen by the stockholders at a general meeting. In the choice of Assistants, who were to be eighteen in number, at these meetings of the Company, or, as they were called, Courts of Election, the practice seems to have been for the names of the candidates to be regularly moved and seconded, and put to the question, one by one, in the same manner with all other motions. This was then, as it is now, the mode of proceeding in England, in the election of the Speaker of the House of Commons, and in the appointment of committees of the House, when they are not chosen by ballot. Probably, also, it was the usual mode of proceeding in electing the officers of a private corporation or company. In voting upon the names thus proposed, it was ordered — with a view, doubtless, to secure the independence and impartiality of the electors — that the freemen, instead of giving an affirmative or negative voice in the usual open and visible manner, should give their suffrages by ballot, and for that purpose should 'use Indian corn and beans: the Indian corn to manifest election, the beans contrary.' The names of the candidates being thus moved and voted upon, each by itself, it followed, of course, that no person could be elected but by an absolute majority."[1]

The rule, thus curiously explained, continued in Massachusetts down to a recent day; at last it yielded

[1] Law and Practice of Legislative Assemblies in the United States (2d edit.), Appendix, IV., p. 996.

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to the exigency of public convenience, so that at this moment, I believe, popular elections throughout the United States are by the plurality rule. But I repeat, that this is no authority for overturning the rule of the majority in a legislative body, having in its favor so many reasons of law and tradition.

I have only alluded to the Law of Corporations; but this law is of weight in determining the present case. According to this law, the rule of the majority must prevail. Indeed, an eminent jurist says that this rule is according to the Law of Nature, as it is unquestionably according to the Roman Law, and the modern law of civilized states.[1] But what is a legislative body but a political corporation? Therefore, when asked if a Legislature, even by legislative act, may set aside the rule of the majority in the election of Senators, I must candidly express a doubt. The Constitution confides this power to the "Legislature"; but the "Legislature" consists of a majority. *Ubi major pars est, ibi totum:* "Where the greater part is, there is the whole." Such is an approved maxim of the law; and this maxim has in its support, first, the Law of Nature, secondly, the Law of Corporations, thirdly, the Parliamentary Law, and, fourthly, the principles of republican government. Who ever thought of saying, Where the minority is, there is the whole?

But we are not asked now to decide the question, whether the Legislature, by legislative act, may substitute the rule of a minority for the majority. That question is not necessarily before us. In the present case there has been no legislative act; and the question is, whether the rule of the minority may be sub-

[1] Savigny, System des heutigen Römischen Rechts, § 97, Band II. p. 329.

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stituted for the majority by the abnormal body known as joint meeting. On this point the conclusion is clear. Even assuming that this substitution may be made by legislative act, it does not follow that it may be made in joint meeting.

Surely, such a change is of immense gravity, and should be made only under all possible solemnities and safeguards. If ever there was occasion for the delays and precautions provided by legislative proceedings, with three different readings in each separate House, it must be when such a change is in question. Such surely is the suggestion of reason. But the Constitution itself, which delegates to the "Legislature" of each State the power to *prescribe the manner* of electing Senators, uses language not open to evasion. This power is to be exercised by the "Legislature," which may prescribe the manner. It is not to be exercised by any other body than the Legislature; and the manner is to be prescribed by the Legislature. But, assuming that it may be exercised in joint meeting, it is clear that this must be in pursuance of some legislative act, prescribing in advance the manner.

Supposing the case doubtful, then I submit that all presumptions and interpretations must tend to support the rule of a majority. In other words, so important a rule, having its foundation in the Law of Nature, the Law of Corporations, Parliamentary Law, and the principles of republican institutions, cannot be set aside without the plainest and most positive intendment. It cannot be done by inference or construction. If ever there was occasion where every doubt was to be counted against the assumption of power, it is the present. I know very little of cards, but I remember a rule of

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Hoyle, "When you are in doubt, take the trick." Just the reverse must be done in a case like the present, involving so important a principle: when you are in doubt, do not take the trick. This is a republican government, and surely you will not abandon the first principle of a republican government without good reason. According to received maxims of law, you must always incline in favor of Liberty. In the same spirit you must always incline in favor of every principle of republican government, and especially of that vital principle which establishes the rule of the majority. Thus inclining, the way at present is easy; and here I quote another authority, very different from Hoyle. Lord Bacon, in his Maxims of the Law, after mentioning a similar presumption, says: —

"It is a rule drawn out of the depths of reason..... It makes an end of many questions and doubts about construction of words: for, if the labor were only to pick out the intention of the parties, every judge would have a several sense; *whereas this rule doth give them a sway to take the law more certainly one way.*"[1]

And now, Sir, I have only to add, in conclusion, let us incline in favor of the rule of the majority. So inclining, you will at once show reverence for the republican principle and will stand on the ancient ways.

The question was then taken on an amendment, moved by Mr. Clark, of New Hampshire, to insert the word "not" before the word "duly" in the resolution of the Committee, and also before the word "entitled," so that it should read that he "was not duly elected, and is not entitled to his seat." This amendment was lost, — Yeas 19, Nays 21. The question then recurred on the resolution of the Committee. Upon the conclusion of the calling of the roll, the vote stood,

[1] Maxims, Reg. 8.

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Yeas 21, Nays 20, when Mr. Morrill, of Maine, said, "Call my name." This was done, and he said, "I vote nay." Mr. Stockton, who had not voted, rose, and, after stating that his colleague, Mr. Wright, was at home, said, "When he was last in this Chamber, he told me, as he left the Hall, that he would not go home, if it were not for the fact that he had paired off with the Senator from Maine. Mr. President, I ask that my name be called." His name was then called, and he voted in the affirmative, so that the result was, Yeas 22, Nays 21. Meanwhile Mr. Morrill stated the circumstances with regard to his original pair with Mr. Wright and his withdrawal from it. The result was then declared, — Yeas 22, Nays 21, — making a majority in the affirmative, and the resolution was treated as adopted.

The sequel of these proceedings, ending in the passage of a resolution, moved by Mr. Sumner, "that the vote of Mr. Stockton be not received," and the adoption of a resolution declaring him "not entitled to a seat as Senator," will appear under the next article.

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A SENATOR CANNOT VOTE FOR HIMSELF.

SPEECH IN THE SENATE, ON THE VOTE OF HON. JOHN P. STOCKTON AFFIRMING HIS SEAT IN THE SENATE, MARCH 26, 1866.

MARCH 26th, immediately after the reading of the Senate journal, Mr. Sumner rose to what he called a question of privilege, and moved "that the journal of Friday, March 23, 1866, be amended by striking out the vote of Mr. Stockton on the question of his right to a seat in the Senate." The circumstances of this vote appear at the close of the last article. On his motion Mr. Sumner said: —

THERE are two ways, I believe, if there are not three, but there are certainly two ways of meeting the question presented by the vote of Mr. Stockton. I use his name directly, because it will be plainer and I shall be more easily understood. I say there are two ways in which the case may be met. One is, by motion to disallow the vote; the other, by motion, such as I have made, to amend the journal. Perhaps a third way, though not so satisfactory to my mind, would be by motion to reconsider; but I am not in a condition to make this motion, as I did not vote with the apparent majority. I call your attention, however, at the outset, to two ways, — one by disallowing the vote, and the other by amending the journal. But behind both, or all three, arises the simple question, Had Mr. Stockton a right to vote? To this it is replied, that his

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name was on the roll of the Senate, and accordingly was called by our Secretary; to which I answer, — and to my mind the answer is complete, — The rule of the Senate must be construed always in subordination to the principles of Natural Law and Parliamentary Law, and therefore you are brought again to the question with which I began, Had Mr. Stockton a right to vote?

Had he a right to vote, first, according to the principles of Natural Law, or, in other words, the principles of Universal Law? I take it there is no lawyer, there is no man even of the most moderate reading, who is not familiar with the principle of jurisprudence, recognized in all countries and in all ages, that no man can be a judge in his own case. That principle has been reduced to form among the maxims of our Common Law, — *Nemo debet esse judex in propria sua causa.* As such it has been handed down from the earliest days of the mother country. It was brought here by our fathers, and has been cherished sacredly by us as a cardinal rule in every court of justice. No judge, no tribunal, high or low, can undertake to set aside this rule. I have in my hand the most recent work on the Maxims of Law, where, after quoting this rule, the learned writer says: —

"It is a fundamental rule in the administration of justice, that a person cannot be judge in a cause wherein he is interested."[1]

In another place, the same learned writer says: —

"It is, then, a rule always observed in practice, and of the application of which instances not unfrequently occur

[1] Broom, Legal Maxims, (3d edit.,) p. 111.

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that, where a judge is interested in the result of a cause, he cannot, either personally or by deputy, sit in judgment upon it." [1]

This rule had its earliest and most authoritative judicial statement in an opinion by an eminent judge of England, who has always been quoted for integrity in times when integrity was rare: I mean Chief Justice Hobart, of the Court of Common Pleas. In his own Reports, cited as Hobart's Reports, I call attention to the case of *Day* v. *Savadge*, where this learned magistrate said: —

"It was against right and justice, and against natural equity, to allow them [the Mayor and Aldermen of London] their certificate, wherein they are to try and judge their own cause."

And then he says, in memorable language, which has made his name famous: —

"Even an Act of Parliament, made against natural equity, as, to make a man judge in his own case, is void in itself; for *jura naturæ sunt immutabilia*, and they are *leges legum*." [2]

Thus strongly and completely did he cover the present case, reaching forward with judgment. According to him, even an Act of Parliament making a man judge in his own case is void. But, Sir, he was not alone. His great contemporary, and our teacher at this hour, Sir Edward Coke, in a very famous case, known as *Bonham's*, which I have not before me now, but which is referred to in other cases, lays down the same rule, — that a court of justice will not even recognize an Act

[1] Broom, Legal Maxims, (3d edit.,) p. 116.
[2] Hobart, R., 86, 87.

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of Parliament, if it undertakes to make a man judge in his own case.[1]

But another judge, who, as lawyer and authority in courts down to this day, perhaps excels even the two already cited, — I mean Lord Chief Justice Holt, — has explained and developed this principle in masterly language. I refer to what is known as Modern Reports, in the case of *The City of London* v. *Wood*, where he says: —

"I agree, where the city of London claims any freedom or franchise to itself, there none of London shall be judge or jury; for there they claim an interest to themselves against the rest of mankind."

He then explains the principle: —

"It is against all laws, that the same person should be party and judge in the same cause, for it is manifest contradiction; for the party is he that is to complain to the judge, and the judge is to hear the party; the party endeavors to have his will, the judge determines against the will of the party, and has authority to enforce him to obey his sentence: and can any man act against his own will, or enforce himself to obey? The judge is agent, the party is patient, and the same person cannot be both agent and patient in the same thing; but it is the same thing to say that the same man may be patient and agent in the same thing as to say that he may be judge and party, and it is manifest contradiction. And what my Lord Coke says in *Dr. Bonham's Case*, in his 8 Co., is far from any extravagancy; for it is a very reasonable and true saying, that, if an Act of Parliament should ordain that the same person should be party and judge, or, which is the same thing, judge in his own cause, it would be a void Act of Parlia-

[1] 8 Coke, R., 118.

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ment; for it is impossible that one should be judge and party, for the judge is to determine between party and party, or between the Government and the party; and an Act of Parliament can do no wrong, though it may do several things that look pretty odd, for it may discharge one from his allegiance to the Government he lives under and restore him to the state of Nature, but it cannot make one that lives under a government judge and party." [1]

These are the words of Chief Justice Holt. It will be observed that three eminent judges, Hobart, Coke, and Holt, all found the inevitable conclusion on the immutable principles of Natural Law, that law which is common to all countries. It is the very law of which Cicero spoke in the memorable sentence of his treatise on the Republic, when he said that there was but one law for all countries, now and in all times, the same at Athens as in Rome.[2] It is also that universal law to which the great English writer, Hooker, alluded, when he said that her seat is the bosom of God; all things on earth do her homage, — the least as feeling her care, and the greatest as not exempt from her power. To this Universal Law all your legislation must be brought as to a touchstone; and all your conduct in this Chamber, and all your rules, must be in accordance with it. Therefore I say, as I began, the practice of calling the roll of the Senate must be interpreted in subordination to this commanding rule of Universal Law.

This is not all. I said that it was forbidden, not

[1] 12 Modern Reports, 687, 688.

[2] "Nec erit alia lex Romæ, alia Athenis, alia nunc, alia posthac; sed et omnes gentes et omni tempore una lex et sempiterna et immutabilis continebit, unusque erit communis quasi magister et imperator omnium deus." — *De Republica*, Lib. III. c. 22.

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only by Natural Law, but also by Parliamentary Law. Of course, Parliamentary Law in itself must be in harmony with Natural Law; but Parliamentary Law has undertaken in advance to deal with this very question. There is no express rule of the Senate on the subject, but here is a rule of the other House: —

"No member shall vote on any question in the event of which he is immediately and particularly interested." [1]

This is but an expression in parliamentary language of what I have announced as the rule of universal jurisprudence. But, Sir, this rule was borrowed from the rules of the British House of Commons, one of which is, —

"If anything shall come in question touching the *return or election* of any member, he is to withdraw during the time the matter is in debate." [2]

I quote from May's Parliamentary Law. From another work of authority, Dwarris on Statutes, I now read: —

"No member of the House may be present in the House when a bill or any other business concerning himself is debating; while the bill is but reading or opening, he may." [3]

Then, after citing two different cases, the learned writer proceeds: —

"This rule was always attended to in questions relative to the seat of a member on the hearing of controverted elections, and has been strictly observed in cases of very great moment." [4]

[1] Rules and Orders of the House of Representatives: Rule 28 [29].
[2] May, Treatise on the Law, etc., of Parliament, (5th edit.,) p. 598.
[3] Dwarris, Treatise on Statutes, (2d edit.,) Part I. p. 220.
[4] Ibid.

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Again the same writer says: —

"Where a member appeared to be 'somewhat' concerned in interest," —

That is the phrase, only "somewhat concerned," —

"his voice has been disallowed after a division."[1]

Then, again, our own eminent countryman, Cushing, who was quoted so frequently the other day, in his elaborate book on the Law and Practice of Legislative Assemblies, expresses himself as follows: —

"Cases are frequent in which votes received have been disallowed."[2]

Again he says: —

"Votes have also been disallowed after the numbers have been declared, on the ground that the members voting were interested in the question; and, in reference to this proceeding, there is no time limited within which it must take place."[3]

Thus, Sir, it is apparent that Parliamentary Law is completely in harmony with Natural Law. Indeed, if it were not, it would be our duty to correct it, that it might be made in harmony.

And now, after this statement of the law, which I believe completely applicable to the present case, I am brought to consider the remedy. I said at the outset that there were two modes: one was by disallowing the vote on motion to that effect, and the other by amending the journal. But first let me call attention to the practice in disallowing a vote on motion. I have

[1] Dwarris, Treatise on Statutes, (2d edit.,) Part I. p. 245.
[2] Law and Practice of Legislative Assemblies (2d edit.), p. 711.
[3] Ibid., p. 713.

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already read from Dwarris, where the vote was disallowed, and I will read it again: —

"Where a member appeared to be 'somewhat' concerned in interest, his voice has been disallowed after a division."

MR. TRUMBULL. Was that at the same or a subsequent session?

MR. SUMNER. It does not appear whether it was at a subsequent session, but it simply appears that it was after the division. The Senator understands that the division in the British Parliament corresponds with what we call the yeas and nays. They "divide," as it is called, — the yeas and the nays being counted by tellers as they pass.

The American authority is in harmony with the English already quoted. I read again from Cushing.

"The disallowance of votes usually takes place, when, after the declaration of the numbers by the Speaker, it is discovered that certain members who voted were not present when the question was put, or *were so interested in the question*" —

Mark those words, if you please, Sir —

"that they ought to have withdrawn from the House.

"It has already been seen, that, when it is ascertained that members have improperly voted, on a division, who were not in the House when the question was put, if this takes place before the numbers are declared by the Speaker, such votes are disallowed by him at once, and not included in the numbers declared. If the fact is not ascertained until after the numbers are declared, it is then necessary that there should be a motion and vote of the House for their disallowance; and this may take place, for anything that appears to the contrary, at any time during the session, and

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has in fact taken place after the lapse of several days from the time the votes were given."[1]

Thus much for the remedy by disallowance; and this brings me to the proposition by amending the journal. That remedy, from the nature of the case, is applicable to an error apparent on the face of the journal. I ask Senators to note the distinction. It is applicable to an error apparent on the face of the journal. If the interest of a Senator appeared only by evidence *aliunde*, by evidence outside, as, for instance, that he had some private interest in the results of a pending measure by which he was disqualified, his vote could be disallowed only on motion; but if the incapacity of the Senator to vote on a particular occasion appears on the journal itself, I submit that the journal must be amended by striking out his vote. The case is patent. We have already seen, by the opinions of eminent judges, great masters of law in different ages, that what is contrary to the principles of Natural Law must be void; and English judges tell us that even an Act of Parliament must be treated as void, if it undertakes to make a man judge in his own case.

Now, Sir, apply that principle to your journal. It has recognized a man as judge in his own case. I insist that the recognition was void. Is not the true remedy by amending the journal so as to strike out his name? The journal discloses the two essential facts, — first, that as Senator he was party to the proceedings, secondly, that as Senator he was judge in the proceedings; and since these two facts appear on the face of the journal, it seems to me that the only substantial remedy is by amending it, so that a precedent of such

[1] Law and Practice of Legislative Assemblies (2d edit.), pp. 712, 713.

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a character shall not find place hereafter in the records of the Senate.

Sir, this question is not insignificant; it is grave. It belongs to the privileges of the Senate. I might almost say, it is closely associated with the character of the Senate. Can Senators sit here and allow one of their number, on an important occasion, to come forward and play at the same time the two great parts, party and judge? And yet these two great parts have been played, and your journal records the performance. Suppose Jesse D. Bright, some years since expelled from the Senate, after animated debate lasting weeks, and our excellent Judiciary Committee reporting in his favor, — suppose he had undertaken to vote for himself, — is there a Senator who would not have felt it wrong to admit his vote? The defendant showed no want of hardihood, but he did not offer to vote for himself. But, if Mr. Stockton can vote for himself, how can you prevent a Senator from voting to save himself from expulsion? The rule must be the same in the two cases. Therefore I ask that the journal be rectified, in harmony with Parliamentary Law and the principles of Universal Law.

In making this motion, I have no other motive than to protect the rights of the Senate, and to establish those principles of justice which will be a benefit to our country for all time. You cannot lightly see a great principle sacrificed. You abandon your duty, if you allow an elementary principle of justice to be set at nought in this Chamber. Be it, Sir, our pride to uphold those truths and to stand by those principles. I know no way in which we can do it now so completely as in the motion I have made. The vote of

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Mr. Stockton was null and void. It should be treated as if it had not been given.

I have no doubt that the motion to correct the journal would be in order even at a late day. I believe that at any day any Senator might rise in his place and move to expunge from the journal a record in itself derogatory to the body. I have in my hands a reference to the case of John Wilkes, who, you will remember, just before our Revolution, was excluded from Parliament, while his competitor, Luttrell, was declared duly elected. The decision of Parliament, so the history records, convulsed the whole kingdom for thirteen years, but after that long period it was expunged from the journal, — I now quote the emphatic words, — "as being subversive of the rights of the whole body of electors of this kingdom." I submit, Sir, the record in your journal is subversive of the great principle of jurisprudence on which the rights of every citizen depend.

Mr. Reverdy Johnson followed, criticizing Mr. Sumner. He concluded by saying: "Even supposing there was the slightest want of delicacy in casting a vote upon such a question by the member whose seat is contested, it was in the particular instance more than justified by the circumstances existing at the time the vote was cast."

Mr. Trumbull said: —

"I believe, as I said before, that the Senator from New Jersey is entitled to his seat; but I do not believe that he is entitled to hold his seat by his own vote. He would have held his seat without his own vote. The vote upon the resolution was a tie without the vote of the Senator from New Jersey; and that would have left him in his seat, he already having been sworn in as a member. It is not necessary that the resolution should have passed. He is here as a Senator, and it would require an affirmative vote to deprive him of his seat as a Senator."

He then avowed his willingness to move a reconsideration of the vote by which the resolution was carried, "if that is necessary to accomplish the object."

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Mr. Sumner, after saying, that, when he brought forward his motion, he had no reason to suppose that any Senator would move a reconsideration, proceeded: —

The Senator from Illinois says, Suppose we strike out Mr. Stockton's name, what will be the effect? I answer, To change all subsequent proceedings, and make them as if he had not voted, so that the whole record must be corrected accordingly. The Senator supposes a bill passed by mistake afterwards discovered, and asks if the bill could be arrested. Clearly, if not too late. A familiar anecdote with regard to the passage of the Act of *Habeas Corpus* in England will help answer the Senator. According to the story, — it is Bishop Burnet who tells it,[1] — this great act, which gave to the English people what has since been called the palladium of their liberties, passed under a misapprehension created by a jest. It seems that among the affirmative peers walking through the tellers was one especially fat, when it was said, "Count ten," — and ten was counted for the bill, thus securing its passage. I am not aware that the mistake was divulged until too late for correction. But we have had in the other House two different cases, which answer precisely the inquiry of the Senator.

Here Mr. Sumner read from the House Journal, 29th Congress, 1st Session, July 6, 1846, p. 1032, a motion by Mr. McGaughey with regard to the Journal. He next read from the House Journal, 31st Congress, 1st Session, September 10, 1850, p. 1436, the following entry: —

"The Speaker stated that the result of the vote of the House on yesterday on the passage of the bill of the House (No. 387) to supply a deficiency in the appropriation for pay and mileage of members of Congress for the present session had been erroneously announced, and that the subsequent proceedings upon the said bill would consequently fall.

[1] History of His Own Times (fol. edit.), Vol. I. p. 485.

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"The Speaker then announced the vote to be, Yeas 78, Nays 76.

"So the bill was passed; and the journal of yesterday was ordered to be amended accordingly."

In conformity with this precedent, Mr. Sumner did not doubt that by the correction of the journal the vote affirming Mr. Stockton's seat would fall, and he thought it better to follow this course; but, anxious to avoid a protracted discussion, and to "seek a practical result," he was willing to withdraw his proposition.

Mr. Sherman, of Ohio, thought that Mr. Sumner would "err in withdrawing the proposition." Mr. Davis, of Kentucky, maintained "that Mr. Stockton had an undoubted right to vote." Mr. Stockton followed in vindication of his vote, referring especially to an alleged understanding between Mr. Morrill and Mr. Wright, which he said was violated by the vote of the former.

"I never looked upon this as my case. It was the case of the Senator from New Jersey. And when one gentleman from New Jersey, my colleague, was deprived of his vote by — what shall I term it? I do not propose to violate parliamentary propriety by terming it anything, — but when one Senator from New Jersey by artifice was prevented from recording his vote, as he would have done, the other was not to vote from delicacy.

"Mr. President, there are eleven States out of the Union, and they wanted to put New Jersey out; and I did not mean that they should do it from motives of delicacy on my part."

Mr. Trumbull said, "Let us settle at this time that a member has no right to vote upon the question. . . . . I think, upon consideration, that perhaps the best way to arrive at it is by the adoption of the resolution offered by the Senator from Massachusetts." Mr. Lane, of Kansas, who had voted to sustain Mr. Stockton, said, "I was never more surprised in my life than when the Senator from New Jersey asked to vote and did vote." Soon afterwards, Mr. Stockton said, "I rise to withdraw my vote, with the permission of the Senate," and proceeded to explain his position. In reply to an inquiry from Mr. Sumner, the presiding officer [Mr. CLARK, of New Hampshire] said, "The Chair is of opinion that he cannot, unless by the unanimous consent of the Senate he wishes to correct the journal." Mr. Sumner formally withdrew his motion to correct the journal, "with the understanding that the Senator from Vermont [Mr. POLAND] makes the motion for a reconsideration." Mr. Poland accordingly moved the reconsideration, and this was agreed to, so that the original question was again before the Senate. There was still debate and perplexity as to the proper proceeding in order to repair the error in receiving Mr. Stockton's vote, when Mr. Sumner moved: —

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"That the vote of Mr. Stockton be not received, in determining the question of his seat in the Senate."

Mr. Sumner remarked: —

I HAVE no personal question with the Senator; I have for him nothing but kindness and respect. I deal with this question simply as a question of principle. The Senator tells us that he will not vote, when the case comes up again. I believe him; he will not vote. But, Sir, he has taken the Constitution in his hand, and, holding it up, he tells us that he finds in that instrument authority for it in his case. . . . .

Since the Senator makes the claim, it is important for us to meet it, in some way or other, — by correcting the journal, or by a resolution declaring that the Senator shall not vote, — fixing the precedent forever, so that hereafter we shall not be left to the uncertain will or opinion of a Senator whose seat may be in question. We must rely, not upon his honor, but upon the Constitution, interpreted by this body and fixed beyond recall. Therefore I think still it would be better, if the Senate had corrected its journal. Being a vote that in itself was null and void, it was to be treated as not having been given.

The Senator asks to withdraw his vote. To withdraw what? Something which has never been done, — that is, legally done. There is no legal vote of the Senator. His name is recorded as having voted, but it is a vote that at the time was null and void. There is nothing, therefore, for him to withdraw, but something for the Senate to annul.

Mr. Sherman moved the reference of Mr. Sumner's resolution to the Committee on the Judiciary. The Senate refused to refer, — Yeas 18, Nays 22. The resolution was then adopted.

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March 27th, the consideration of the resolution declaring Mr. Stockton "duly elected" was resumed, when, after the failure of an effort to postpone it, Mr. Clark moved to amend it by declaring that he "is not entitled to a seat as Senator." On this amendment Mr. Stockton spoke at length. The amendment was adopted, — Yeas 22, Nays 21, — Mr. Stockton not voting. He said, "I desire to state, in order that it may be a part of the record, that I do not vote on this question, on account of the resolution passed by the Senate yesterday." The resolution as amended was then adopted, — Yeas 23, Nays 20.

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REMODELLING OF THE SUPREME COURT OF THE UNITED STATES.

REMARKS IN THE SENATE, ON THE BILL TO REORGANIZE THE JUDICIARY OF THE UNITED STATES, APRIL 2, 1866.

THIS bill, reported from the Judiciary Committee by Mr. Harris, of New York, was considered for several days in the Senate, and finally passed that body. It failed in the House of Representatives. Another bill, having a similar object, afterwards became a law.[1]

On the present bill Mr. Sumner remarked: —

WE all know that the Supreme Court is now some three years behind in its business, and the practical question is, How are we to bring relief? There are two different ways. One is by limiting appeals, so that hereafter it shall have less business. Another, and to my mind the better way, would be to allow appeals substantially as now, but to limit the court to the exclusive hearing of those appeals. Of course that raises the question, whether the judges of the Supreme Court sitting here in Washington should have duties elsewhere. That is a question of practice, and also of theory. Since I have been in the Senate, it has been very often discussed, formally or informally, and there have been differences of opinion upon it. I believe the inclination has always been that judges are better in

[1] Act of April 10, 1869: Statutes at Large, Vol. XVI. pp. 44, 45.

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the discharge of their duties from experience at *Nisi Prius*. That opinion, I take it, is derived from England; and yet I need not remind the Senator from New York that the two highest courts in England are held by judges who at the time do nothing at *Nisi Prius*, and do not go the circuit: I refer to the court of the Privy Council, and to the highest court of all, the court of the House of Lords. If you pass over to France, where certainly the judicature is admirably arranged on principles of science, where I believe justice is assured, you have the highest court, known as the Court of Cassation, composed of persons set apart exclusively for appeals, — never leaving Paris, and never hearing any other business except that which comes before them on appeal.

I refer to these instances for illustration. The Senate is also aware, that, in the beginning of our Government, when Washington invited his first Chief Justice and his Associates to communicate their views on the subject of the Judiciary system, the answer, prepared by John Jay, assigned strong reasons why the Supreme Court should be exclusively for the consideration of appeals.[1] The other business was by circuit judges. This recommendation was put aside, and the existing system prevailed. Justice has been administered to the satisfaction of the country, reasonably at least, under this system.

But now we are driven to a pass: justice threatens to fail in the Supreme Court, unless we provide relief. Is the bill of the Senator from New York adequate? Speaking frankly, I fear that it is not; and I fear

[1] Story, Commentaries on the Constitution, § 1573, Vol. III. pp. 487, seqq., note.

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that the proposition of my friend from Wisconsin [Mr. HOWE], if adopted, will still further limit the relief which my friend from New York proposes. I am disposed to believe that the only real relief will be found in setting apart the judges of our highest court exclusively for the consideration of appeals. They would then sit as many months in the year as they could reasonably give to judicial labor. They might, perhaps, hear every case that could reach the tribunal, while they had a vacation to themselves in which to review the science of their profession and add undoubtedly to their attainments. I remember that one of the ablest lawyers in England, in testimony some years ago before a Committee of the House of Commons on the value of what is known as the vacation, — I refer to Sir James Scarlett, afterward Lord Abinger, Lord Chief Baron, — testified that for one, as an old lawyer, he regarded the vacation as important, because it gave him an opportunity to review his studies and to read books that he could not read in the urgency of practice. I have heard our own judges make similar remarks.

Now the question is, whether the present bill meets the case. Does it supply the needed relief? I fear it does not; and I really should be much better satisfied, if my friend from New York had dealt more boldly with the whole question by providing a court of appeal, composed of the eminent judges of the land, devoted exclusively to appeals, and leaving to other judges the hearing of cases at *Nisi Prius*.

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THE LATE SOLOMON FOOT, SENATOR FROM VERMONT.

SPEECH IN THE SENATE, ON HIS DEATH, APRIL 12, 1866.

MR. PRESIDENT,—There is a truce in this Chamber. The antagonism of debate is hushed. The sounds of conflict have died away. The white flag is flying. From opposite camps we meet to bury the dead. It is a Senator we bury, not a soldier.

This is the second time during the present session that we have been called to mourn a distinguished Senator from Vermont. It was much to bear the loss once. Its renewal now, after so brief a period, is a calamity without precedent in the history of the Senate. No State before has ever lost two Senators so near together.

Mr. Foot, at his death, was the oldest Senator in continuous service. He entered the Senate in the same Congress with the Senator from Ohio [Mr. WADE] and myself; but he was sworn at the executive session in March, while the two others were not sworn till the opening of Congress at the succeeding December. During this considerable space of time I have been the constant witness to his life and conversation. With a sentiment of gratitude I look back upon our relations, never from the beginning impaired or darkened by dif-

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ference. For one brief moment he seemed disturbed by something that fell from me in the unconscious intensity of my convictions; but it was for a brief moment only, and he took my hand with a genial grasp. I make haste also to declare my sense of his personal purity and his incorruptible nature. Such elements of character, exhibited and proved throughout a long service, render him an example for all. He is gone; but these virtues "smell sweet and blossom in the dust."

He was excellent in judgment. He was excellent also in speech; so that, whenever he spoke, the wonder was that he who spoke so well should speak so seldom. He was full, clear, direct, emphatic, and never was diverted from the thread of his argument. Had he been moved to mingle actively in debate, he must have exerted a commanding influence over opinion in the Senate and in the country. How often we have watched him tranquil in his seat, while others without his experience or weight occupied attention! The reticence which was part of his nature formed a contrast to that prevailing effusion where sometimes the facility of speech is less remarkable than the inability to keep silence; and, again, it formed a contrast to that controversial spirit which too often, like an unwelcome wind, puts out the lights while it fans a flame. And yet in his treatment of questions he was never incomplete or perfunctory. If he did not say, with the orator and parliamentarian of France, the famous founder of the "Doctrinaire" school of politics, M. Royer-Collard, that respect for his audience would not permit him to ask attention until he had reduced his thoughts to writing, it was evident that he never spoke in the Senate without careful preparation. You remember well his com-

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memoration of his late colleague, only a few short weeks ago, when he delivered a funeral oration not unworthy of the French school from which this form of eloquence is derived. Alas! as we listened to that most elaborate eulogy, shaped by study and penetrated by feeling, how little did we think that it was so soon to be echoed back from his own tomb!

Not in our debates only did this self-abnegation show itself. He quietly withdrew from places of importance on committees to which he was entitled, and which he would have filled with honor. More than once I have known him insist that another should take the position assigned to himself. He was far from that nature which Lord Bacon exposes in pungent humor, when he speaks of "extreme self-lovers," that "will set an house on fire and it were but to roast their eggs."[1] And yet it must not be disguised that he was happy in the office of Senator. It was to him as much as his "dukedom" to Prospero. He felt its honors and confessed its duties. But he was content. He desired nothing more. Perhaps no person appreciated so thoroughly what it was to bear the commission of a State in this Chamber. Surely no person appreciated so thoroughly all the dignities belonging to the Senate. Of its ceremonial he was the admitted arbiter.

There was no jealousy, envy, or uncharitableness in him. He enjoyed what others did, and praised generously. He knew that his own just position could not be disturbed by the success of another. Whatever another may be, whether more or less, a man must always be himself. A true man is a positive, and not a relative quantity. Properly inspired, he will know

[1] Essays: Of Wisdom for a Man's Self.

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that in a just sense nobody can stand in the way of another. And here let me add, that, in proportion as this truth enters into practical life, we shall all become associates and coadjutors rather than rivals. How plain, that, in the infinite diversity of character and talent, there is place for every one! This world is wide enough for all its inhabitants; this republic is grand enough for all its people. Let every one serve in his place according to his allotted faculties.

In the long warfare with Slavery, Mr. Foot was from the beginning firmly and constantly on the side of Freedom. He was against the deadly compromises of 1850. He linked his shield in the small, but solid, phalanx of the Senate which opposed the Nebraska Bill. He was faithful in the defence of Kansas, menaced by Slavery; and when at last this barbarous rebel took up arms, he accepted the issue, and did all he could for his country. But even the cause which for years he had so much at heart did not lead him into debate, except rarely. His opinions appeared in votes, rather than in speeches. But his sympathies were easily known. I call to mind, that, on first coming into the Senate, and not yet personally familiar with him, I was assured by Mr. Giddings, who knew him well, that he belonged to the small circle who would stand by Freedom, and the Antislavery patriarch related pleasantly, how Mr. Foot, on his earliest visit to the House of Representatives after he became Senator, drew attention by coming directly to his seat and sitting by his side in friendly conversation. Solomon Foot by the side of Joshua R. Giddings, in those days, when Slavery still tyrannized, is a picture not to be forgotten. If our departed friend is not to be named among those who have borne the

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burden of this great controversy, he cannot be forgotten among those whose sympathies with Liberty never failed. Would that he had done more! Let us be thankful that he did so much.

There is a part on the stage known as "the walking gentleman," who has very little to say, but always appears well. Mr. Foot might seem, at times, to have adopted this part, if we were not constantly reminded of his watchfulness in everything concerning the course of business and the administration of Parliamentary Law. Here he excelled, and was master of us all. The division of labor, which is the lesson of political economy, is also the lesson of public life. All cannot do all things. Some do one, others do another,— each according to his gifts. This diversity produces harmony.

The office of President *pro tempore* among us grows out of the anomalous relations of the Vice-President to the Senate. There is no such officer in the other House, nor was there in the House of Commons until very recently, when we read of a "Deputy Speaker," which is the term by which he is addressed, when in the chair. No ordinary talent can guide and control a legislative assembly, especially if numerous or excited by party differences. A good presiding officer is like Alexander mounted on Bucephalus. The assembly knows its master, "as the horse its rider." This was preëminently the case with Mr. Foot, who was often in the chair, and for a considerable period our President *pro tempore*. Here he showed special adaptation and power. He was in person "every inch" a President; so also was he in every sound of the voice. He carried into the chair the most marked individuality that has been seen

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there during this generation. He was unlike any other presiding officer. "None but himself could be his parallel." His presence was felt instantly. It filled this Chamber from floor to gallery. It attached itself to everything done. Vigor and despatch prevailed. Questions were stated so as to challenge attention. Impartial justice was manifest at once. Business in every form was handled with equal ease. Order was enforced with no timorous authority. If disturbance came from the gallery, how promptly he launched the fulmination! If it came from the floor, you have often seen him throw himself back, and then with voice of lordship, as if all the Senate were in him, insist that debate should be suspended until order was restored. "The Senate must come to order!" he exclaimed; and, like the god Thor, beat with hammer in unison with voice, until the reverberations rattled like thunder in the mountains.

The late Duc de Morny, who was the accomplished President of the Legislative Assembly of France, in a sitting shortly before his death, after sounding his crier's bell, which is the substitute for the hammer among us, exclaimed from the chair: "I shall be obliged to mention by name the members whom I find conversing. I declare to you that I shall do so, and I shall have it put in the 'Moniteur.' You are here to discuss and to listen, not to converse. I promise you that I will do what I say to the very first I catch talking." Our President might have found occasion for a similar speech, but his energy in the enforcement of order stopped short of this menace. Certainly he did everything consistent with the temper of the Senate, and he showed always what Sir William Scott, on one

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occasion, in the House of Commons, placed among the essential qualities of a Speaker, when he said that "to a jealous affection for the privileges of the House" must be added "an awful sense of its duties."[1]

Accustomed as we have become to the rules which govern legislative proceedings, we are hardly aware of their importance in the development of liberal institutions. Unknown in antiquity, they were unknown also on the European continent until latterly introduced from England, which was their original home. They are among the precious contributions which England has made to modern civilization; and yet they did not assume at once their present perfect form. Mr. Hallam tells us that even as late as Queen Elizabeth "the members called confusedly for the business they wished to have brought forward."[2] But now, at last, these rules have become a beautiful machine, by which business is conducted, legislation moulded, and debate in all possible freedom secured. From the presentation of a petition or the introduction of a bill, all proceeds by fixed processes, until, without disorder, the final result is reached and a new law takes its place in the statute-book. Hoe's printing-press or Alden's type-setter is not more exact in operation. But the rules are more even than a beautiful machine; they are the very temple of Constitutional Liberty. In this temple our departed friend served to the end with pious care. His associates, as they recall his stately form, silvered by time, but beaming with goodness, will not cease to cherish the memory of such service. His image will

[1] Address on nominating Hon. Charles Abbot to the Speakership of the House of Commons, November 16, 1802: Hansard's Parliamentary History, Vol. XXXVI. col. 915.

[2] Constitutional History of England (London, 1829), Vol. I. p. 358, note.

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rise before them as the faithful presiding officer, by whom the dignity of the Senate was maintained, its business advanced, and Parliamentary Law upheld.

He had always looked with delight upon this Capitol, — one of the most remarkable edifices of the world, — beautiful in itself, but more beautiful still as the emblem of that national unity he loved so well. He enjoyed its enlargement and improvement. He watched with pride its marble columns moving into place, and its dome as it ascended to the skies. Even the trials of the war did not make him forget it. His care secured those appropriations by which the work was forwarded to its close, and the statue of Liberty installed on its sublime pedestal. It was natural that in his last moments, as life was failing fast, he should long to rest his eyes upon an object that was to him so dear. The early light of morning had come, and he was lifted in bed that with mortal sight he might once more behold this Capitol; but another Capitol already began to fill his vision, fairer than your marble columns, sublimer than your dome, where Liberty without any statue is glorified in that service which is perfect Freedom.

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COMPLETE EQUALITY IN RIGHTS, AND NOT SEMI-EQUALITY.

LETTER TO A COMMITTEE ON THE CELEBRATION OF EMANCIPATION IN THE DISTRICT OF COLUMBIA, APRIL 14, 1866.

SENATE CHAMBER, April 14, 1866.

DEAR SIR, — It will not be in my power to celebrate with you Emancipation in the District, but I rejoice that the beautiful anniversary is to be commemorated.

Looking back upon the day when that Act became a law by the signature of Abraham Lincoln, I feel how grandly it has been vindicated by the result. The sinister forebodings of your enemies are all falsified. We were told that you could not bear freedom, — that you would be lawless, idle, and thriftless. I knew the contrary; and is it not as I foretold? Who so mad as to wish back the old system of wrong?

But the work is only *half done.* The freedman, despoiled of the elective franchise, is only *half a man.* He must be made *a whole man;* and this can be only by investing him with all the rights of an American citizen. Here, too, we encounter the same sinister forebodings that stood in the way of Emancipation. We are told that you cannot bear enfranchisement, and that you will not know how to vote. I know the contrary;

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and I am satisfied, further, that there can be no true repose in this country until all its people are admitted to that full equality before the law which is the essential principle of republican government. It were not enough to assure equality in what are called civil rights. This is only *semi-equality*. The equality must be complete. This I ask, not only for your sake, but also for the sake of my country, imperilled by such a denial of justice.

Accept my best wishes, and believe me, dear Sir, faithfully yours,

CHARLES SUMNER.

DANIEL G. MUSE, ESQ.

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JUSTICE TO MECHANICS IN THE WAR.

SPEECH IN THE SENATE, ON A BILL FOR THE RELIEF OF CERTAIN CONTRACTORS, APRIL 17, 1866.

THE Senate having under consideration a bill for the relief of certain contractors for the construction of vessels of war and steam machinery, Mr. Sumner said: —

MR. PRESIDENT, — I am happy to agree with the Senator from Kentucky [Mr. GUTHRIE] in the fundamental principle he has laid down and developed so clearly. I agree with him, that by no legislation of ours can we recognize the principle that contractors with the Government may never lose. The Senator cannot state the proposition too strongly. But I part company with him, when he undertakes to apply it to the present case. We agree on the proposition; we disagree on the application.

Had these contracts covered a period of peace, there would have been occasion for the rule of the Senator. But they were not in a period of peace; they were in a period of war. And the Senator himself has characterized the war as perhaps the greatest in history. If not made in a time of war, they were all the harder performed in those early days which were heralds of war. The practical question for us as legislators is,

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whether we can shut our eyes to that condition of things. The times were exceptional; and so must the remedy be also.

I have said, had it been a season of peace, then the Senator would be right, and we should not be justified in seeking exceptionally to open the Treasury for the relief of these contractors. But, Sir, war is a mighty disturber. What force in human society, what force in business, more disturbing? Wherever it goes, it not only carries death and destruction, but derangement of business, change of pursuits, interference with the currency, and generally dislocation of the common relations of life. You cannot be blind to such a condition of things. You must not shut your eyes to its consequences, if you would do justice now.

I repeat, therefore, did these contracts grow out of a period of peace, I should not now advocate them; but it is because they grow out of a period of war, that I ask for those who have suffered by them the same justice we accord to all who have contributed to our success in that terrible war. Why, Sir, how often do we appeal in this Chamber for justice to all who have helped the great result! It is my duty constantly to plead here for justice to those freedmen who have done so much and placed you under ceaseless obligations. I hope I am not indifferent also to those national creditors who supplied the means which advanced our triumph, — nor yet again to those soldiers, whether on land or sea, who have so powerfully served the national cause. But there is still another class, for whom no one has yet spoken on this floor, who have contributed to our success not less than soldier or creditor, —

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I was almost ready to say, not less than the freedman: I mean the mechanics of the country. They, Sir, have helped you carry this war to its victorious close. Without the mechanics, where would you have been? what would have been your equipments on the land? where would have been that marvellous navy on the sea? It was the skilled labor of the country, rushing so promptly to the rescue, that gave you the power which carried you on from victory to victory.

Now, Sir, the practical question is, whether these mechanics, who have done so much to turn the tide of battle, shall be losers by the skill, the labor, and the time they devoted to your triumph. Tell me not, Sir, that they acted according to contract. To that I reply, The war disturbed the contract, and it is your duty here, sitting as a high court of equity, to review all the circumstances of the case, and see in what way the remedy may be fitly applied. You cannot turn away from the equities, treating it literally and severely according to the precise terms of the contract. You must go into those vital considerations arising out of the peculiar circumstances.

Several facts are obvious to all: a Senator on the other side of the Chamber has alluded to them. In the first place, there was the general increase in the price of labor and material that ensued after these contracts were made. Nobody doubts this. There was then a change in the currency. There were, also, — what have been alluded to several times, — changes in the models of these vessels at the Navy Department, necessarily imposing upon these contractors additional expense and labor. There was another circumstance, to which my attention has been directed latterly, —

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I believe, however, the Senator from Iowa [Mr. GRIMES] alluded to it yesterday, — that at the moment of the war, when labor was highest, when it was most difficult to obtain it, there came an order from the proper authorities exempting those who labored in the arsenals and public yards of the United States from enrolment. Of course, all then in private yards or with contractors, so far as they could, hurried under the national flag, that they might become workmen there, and thus obtain the coveted exemption from enrolment.

. . . . .

This order illustrates very plainly the disturbing influence from the war; and this brings me again to press this point upon your attention. I mention certain particulars in which this appeared; but I would bring home the controlling consideration that we were in a time of war, vast in proportions and most disturbing in its influence. This alone is enough to account for the failure of these contractors. We were not in a period of peace, and you err, if you undertake to hold these contractors to all the austere responsibilities proper in a period of peace.

The Senator from Kentucky said that they took the war into their calculations. Perhaps they did; but who among these contractors could take that war adequately into his calculations? Who among those sitting here or at the other end of the avenue properly appreciated the character of the great contest coming on? Sir, we had passed half a century in peace; we knew nothing of war, or of war preparations, when all at once we were called to efforts on a gigantic scale. Are you astonished that these contractors did not know more about the war than your statesmen? Be to these

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contractors as gentle in judgment and as considerate as you are to others in public life who have erred in calculations with regard to it.

I have said that the interest now in question was the great mechanical interest of the country. It is an interest that is not local, as the bill is for the benefit of mechanics in all parts of the loyal States, from Maryland, in the South, to Massachusetts and Maine, in the North and East, and then stretching from New York, on the seaboard, to Missouri, beyond the Mississippi. I have a list of the States concerned, through different contractors, in this very bill, — Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Ohio, Illinois, Missouri, and even California. The interest for which I am speaking crosses the mountains and reaches to the Pacific Ocean.

I said that this was the skilled labor of the country. What labor more valuable? what service, while the war was proceeding, more important? If these mechanics did not expose their persons in the peril of battle, they gave their skill to prepare others for victory. In ancient times, the oracle said to the city in danger, "Look to your wooden walls." The oracle in our country said, "Look to your ironclads and your double-enders"; and these mechanics came forward and by ingenious labor enabled you to put ironclads and double-enders on the ocean, and thus secure the final triumph. The building of that invulnerable navy was one of the great triumphs of the war, to be commemorated on many a special field, and to be seen in the mighty results we now enjoy.

And yet again I ask, Are you ready to see contract-

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ors, who have done this service, sacrificed? You do not allow the soldier to be sacrificed, nor the national creditor who has taken your stock. Will you allow the mechanic? There are many who, without your help, must suffer. One of the most enterprising and faithful in the whole country is a constituent of my own, who, during the last year, has been hurried into bankruptcy from inability to meet liabilities growing out of the war, and at this moment he finds no chance of relief except in what a just Government may return to him. My friend on my right [Mr. NYE, of Nevada] asked you to be magnanimous to these contractors. I do not put it in that way. I ask you simply to be upright. Do by them as you would be done by.

The Senator from Nevada also very fitly reminded you of the experience of other countries. He told you that England, at the close of the Crimean War, when her mechanics had suffered precisely as yours, did not allow them to be sacrificed, but every pound, every shilling, of liability under their contracts was promptly met by that Government. Will you be less just to mechanics than England? It is an old saying, that republics are ungrateful. I hope that this republic will vie with any monarchy in gratitude to those who have served it. You have shown energy in meeting your enemies. I ask you to show a commensurate energy in doing justice to those who have contributed to your success.

. . . . . .

This bill, after much debate, passed the Senate. It did not pass the House.

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POWER OF CONGRESS TO COUNTERACT THE CATTLE-PLAGUE.

REMARKS IN THE SENATE, ON A RESOLUTION TO PRINT A LETTER OF THE COMMISSIONER OF AGRICULTURE ON THE CATTLE-PLAGUE, APRIL 25, 1866.

MR. SHERMAN, of Ohio, reported the following resolution from the Committee on Agriculture: —

"*Resolved*, That there be printed, for the use of the Senate, ten thousand copies of a letter of the Commissioner of Agriculture, communicating information in relation to the rinderpest or cattle-plague."

In considering the resolution, he remarked that the Committee "would like very much to report some measure of a practical character, to counteract, if possible, the cattle-plague now prevailing in Europe; but we did not see that Congress had authority to pass an effective measure." Mr. Sumner followed: —

I WAS sorry to hear two remarks of the Senator from Ohio. The first told that the cattle-plague is coming. I hope that by proper precautions it may be averted. I do trust it may never come. I will not despair that the Atlantic Ocean may be a barrier. I was sorry also for the other remark, that in his opinion Congress could not apply any efficient remedy. I make no issue on this conclusion; but I was sorry that the Senator having the question in charge had arrived at that result. It does seem to me, that, under the National Government, Congress should be able to apply

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a remedy in such a case. Is not the National Government defective to a certain extent, if Congress has not that power? I open the question interrogatively now, without undertaking to express an opinion upon it.

I agree with the Senator, that it is of great importance that our people should be put on their guard; he, therefore, is right in proposing to circulate all information on the subject. But I do hope that the Senator will consider carefully whether it be not within the power of Congress, in some way or other, directly or indirectly, to apply an efficient remedy.

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URGENT DUTY OF THE HOUR.

LETTER TO THE AMERICAN ANTISLAVERY SOCIETY, MAY 1, 1866.

SENATE CHAMBER, May 1, 1866.

DEAR SIR, — It will not be in my power to take part at the approaching anniversary of the Antislavery Society. My duty keeps me here.

I trust that the Society, which has done so much for human rights, will persevere until these rights are established throughout the country on the impregnable foundation of the Declaration of Independence. This is not the time for relaxation of the old energies. Slavery is abolished only in name. The Slave Oligarchy still lives, and insists upon ruling its former victims.

Believing, as I do, that the National Government owes protection to the freedmen, so that they shall not suffer in rights, I insist on its plenary power over this great question, and that it may do anything needful to assure these rights. In this conviction I shall not hesitate at all times to invoke its intervention, whether to establish what are called civil rights, or that pivotal right of all, the right to elect the government which they support by taxes and by arms.

Accept my best wishes, and believe me, dear Sir, faithfully yours,

CHARLES SUMNER.

THE PRESIDENT OF THE AMERICAN ANTISLAVERY SOCIETY.

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TIME AND RECONSTRUCTION.

REMARKS IN THE SENATE, ON A RESOLUTION TO HASTEN RECONSTRUCTION, MAY 2, 1866.

MR. DIXON, of Connecticut, gave notice of his intention to offer, as a substitute for the bills and resolution reported by the Joint Committee on Reconstruction, the following: —

"That the interests of peace and the interests of the Union require the admission of every State to its share in public legislation, whenever it presents itself, not only in an attitude of loyalty and harmony, but in the persons of representatives whose loyalty cannot be questioned under any constitutional or legal test."

In the debate on printing this resolution, Mr. Sumner said: —

I WAS about to say that the proposition involved in the resolution of the Senator from Connecticut is so important that it may be considered as always in order to discuss it. I do not know that we ought to pass a day without in some way considering it. I certainly do not deprecate this debate; but while so saying, I am very positive on another point. I should deprecate any effort now to precipitate decision on the question; and I most sincerely hope that the Senator from Maine [MR. FESSENDEN], the Chairman of the Committee on Reconstruction, who has this matter in charge, will bear that in mind. I do not believe that Congress at this moment is in a condition to give the country the best measure on this important subject.

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I am afraid that excellent Committee has listened too much to voices from without, insisting that there must be a political issue presented to the country. I have always thought such call premature. There is no occasion now for an issue. There are no elections in any States. The election in Connecticut is over; the election in New Hampshire is over. There are to be no elections before next autumn. What occasion, then, for an issue? I see none, unless Congress, after most careful and mature consideration of the whole subject, is able to present a plan on which we can all honestly unite and as one phalanx move forward to victory.

I shall not be drawn into premature discussion of the scheme presented by the report of the Committee on Reconstruction. I speak now to the question of time only. I am sure that report could not have been made in the last week of March. I am equally sure, that, if it had been postponed until the last week of May, they would have made a better one than they made in the last week of April. I hope, therefore, that the decision of this question will be postponed as long as possible, in order that all just influences may come to Congress from the country, and that Congress itself may be inspired by the fullest and amplest consideration of the whole question.

There is the evidence before this Committee, — we have not yet seen it together. That evidence ought to be together; it ought to be before the whole country; and we should have returning to us from the country the just influence which its circulation is calculated to produce. I am sure, that, wherever that evidence is read, the people will say, Congress is justified

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in insisting upon security for the future. For that purpose I presume the evidence was taken; and I hope Congress will not act until the natural and legitimate influences from the evidence are felt in their counsels.

Allow me to say, by way of comment on the proposition of the Senator from Connecticut, that it seems to me my excellent friend, in bringing it forward, forgot two things.

MR. DIXON. Probably more than that.

MR. SUMNER. But two things he forgot were so great, so essential, that to forget them was to forget everything. In the first place, he forgot that we had been in a war; and, in the second place, he forgot that four million human beings had been changed from a condition of slavery to freedom. Those two ruling facts my excellent friend forgot, evidently, when he drew his proposition. Plainly, he forgot that we had been in a war, because he fails to make any provision for that security which common sense and common prudence, the Law of Nations and every instinct of the human heart, require should be made. He provides no guaranty. Sir, the essential thing, at this moment, is a guaranty. The Senator abandons that. If, like the Senator, I could forget this terrible war, with all the blood and treasure it has cost, I, too, could be indifferent to security for the future; but as that war is always in my mind, the Senator will pardon me, if I insist upon guaranties.

I have said that my excellent friend forgets that four million human beings have been changed in their condition. Four million slaves have been declared freemen. By whom, and by what power? By the

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National Government. And let me say, that, as the National Government gave that freedom, the National Government must secure it. The National Government cannot leave the men it has made free to the guardianship or custody or tender mercies of any other government. It is bound to take them into its own keeping, to surround them with its own protecting power, and invest them with all the rights and conditions which, in the exercise of its best judgment, seem necessary to that end. All that the Senator has forgotten. It is not in his mind. If I could bring myself to such obliviousness, if I could bathe so completely in the waters of Lethe as my excellent friend from Connecticut seems to have done daily in these recent times, I might, perhaps, join in the support of his proposition.

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THE EMPEROR OF RUSSIA AND EMANCIPATION.

REMARKS ON A JOINT RESOLUTION RELATIVE TO ATTEMPTED ASSASSINATION OF THE EMPEROR, MAY 8, 1866.

A JOINT RESOLUTION "relative to the attempted assassination of the Emperor of Russia," introduced in the House of Representatives by Hon. Thaddeus Stevens, passed that body, and in the Senate was referred to the Committee on Foreign Relations.

May 8th, it was reported to the Senate slightly amended, so as to read: —

"*Resolved*, *&c.*, That the Congress of the United States of America has learned with deep regret of the attempt made upon the life of the Emperor of Russia by an enemy of Emancipation. The Congress sends greeting to his Imperial Majesty and to the Russian nation, and congratulates the twenty million serfs upon the providential escape from danger of the sovereign to whose head and heart they owe the blessings of their freedom."

Mr. Sumner, on reporting it, said, that, as it was a resolution which would interest the Senate, and as perhaps it ought to be acted upon immediately and unanimously, he would ask that it be proceeded with at once. There being no objection, he explained it briefly.

MR. PRESIDENT, — This resolution seems scarcely adequate to the occasion, but the Committee was content with making the few slight amendments already approved by the Senate, without interfering further with the idea or language adopted by the other House, where the resolution originated.

From the public prints we learn that an attempt has been made on the life of the Emperor of Russia by an

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assassin, — maddened against him, so it is said, on account of his divine effort to establish Emancipation. Of these things I know nothing beyond the report open to all; but I am not unacquainted with the generous efforts of the Emperor, and the opposition, if not animosity, aroused by his perseverance in completing the good work.

In urging our own duties, I have more than once referred to this shining example.[1] The decree of Emancipation, in February, 1861, has been supplemented by an elaborate system of regulations, where Human Liberty is crowned by the safeguards of a true civilization, including protection to what are styled civil rights, especially rights in court, — then rights of property, with a homestead for every emancipated serf, — then rights of public education; and added to these were political rights, with the right to vote for local officers, corresponding to our officers for town and county: all of which, though just and practical, have encountered obstacles easily appreciated by us, who are in a similar transition period. The very thoroughness with which the Emperor is carrying out Emancipation has aroused the adversaries of reform, and I think it not improbable that it was one of these who aimed the blow so happily arrested. The laggard and dull are not pursued by assassins.

The Emperor of Russia was born in 1818, and is now forty-eight years of age. He succeeded to the imperial throne in 1855. At once, on his accession, he was inspired to accomplish Emancipation in his extended empire, stretching from the Baltic to the Sea of Kamt-

[1] *Ante*, Vol. IX. pp. 444–446; Vol. X. pp. 57–60.

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chatka. One of his earliest declarations signalized his character: he would have this great work begin from above, anxious that it should not proceed from below. Therefore he insisted that the imperial government should undertake it, and not leave the blessed change to the chance of insurrection and blood. He went forward bravely, encountering opposition; and now that the decree of Emancipation has gone forth, he still goes forward to assure all those rights without which Emancipation, I fear, is little more than a name. Our country does well, when it offers sincere homage to the illustrious liberator who has attempted so great a task, and at such hazard, making a landmark of civilization.

Mr. Saulsbury, of Delaware, moved to amend the resolution by striking out the words "by an enemy of Emancipation," and advocated his amendment in a speech. Mr. Sumner replied, that it was impossible for the Senate to ascertain through a commission the precise facts in the case, — that it was an historic case, to be determined by historic evidence, — that the same testimony or report from which we learned the attempt to take the life of the Emperor disclosed also the character of the assassin, — and that doubtless the House of Representatives, from which the resolution came, acted on this authority. The amendment was rejected, and the resolution was passed without a division.

Hon. Gustavus V. Fox, Assistant Secretary of the Navy, was sent to Russia in the ironclad Miantonomoh, charged with the communication of this resolution to the Emperor. He was received with much distinction and hospitality. The visit was subsequently described in a work entitled "Narrative of the Mission to Russia, in 1866, of the Hon. Gustavus Vasa Fox, Assistant Secretary of the Navy, from the Journal and Notes of J. F. Loubat, edited by John D. Champlin, Jr., 1873." The mission was entertained brilliantly by Prince Galitzin at Moscow, August 26th (14th), and it is said that "among the invited guests at the dinner was the emancipated serf, Gvozdeff, the mayor of the commune." [1]

[1] Narrative, p. 265.

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POWER OF CONGRESS TO PROVIDE AGAINST CHOLERA FROM ABROAD.

SPEECHES IN THE SENATE, ON A JOINT RESOLUTION TO PREVENT THE INTRODUCTION OF CHOLERA INTO THE PORTS OF THE UNITED STATES, MAY 9, 11, AND 15, 1866.

MAY 9th, the Senate having under consideration a joint resolution, which had passed the House of Representatives, to prevent the introduction of cholera into the ports of the United States, Mr. Sumner said: —

MR. PRESIDENT, — I must say, that, reflecting upon this question, I find that I travelled with my friend from Maine [Mr. MORRILL] through his inquiries and his doubts, but it was only to arrive substantially at the conclusion of my friend from Vermont [Mr. EDMUNDS]. I thought that the criticism of my friend from Maine was in many respects, at least on its face, just. I went along with him, and yet I hesitated in adopting the conclusion he seemed to intimate. I doubt, if we proceed under the House resolution, whether we shall do the work thoroughly. I doubt whether that resolution can be made sufficiently effective. Indeed, I may go further, and say I am satisfied that it will not be efficient for the occasion. We then have the substitute proposed by our own Committee. Against that there is certainly the remark to be made, that it is novel. I am not aware that any

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such proposition has ever before been brought forward; but certainly it has in its favor the great argument of efficiency. Yet the question remains behind, to which the Senator from Maine has directed attention, — whether this proposition is not something more than even a novelty, — whether it is not a departure from just principles. I am not inclined to say that it is anything more than a novelty. I admit that it is such. It does invest the Government with large and perhaps unprecedented powers, in order to meet a peculiar case, where a stringent remedy must be applied.

But, as the Chairman of the Committee on Commerce suggests, the powers are temporary. I am not ready to say that such powers cannot be intrusted to the Government. I believe they can be. But while I agree in that, and am ready to vote accordingly, yet I should like to know from the Chairman why these powers are to be placed under the direction of the Secretary of War rather than of the Secretary of the Treasury.

Mr. Chandler, of Michigan, the Chairman, said that they were placed jointly in three Secretaries, the Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury. After briefly considering this organization, Mr. Sumner proceeded further.

May 11th, Mr. Sumner spoke again.

I SHOULD not say anything now, but for the remarks of my friend from New York [Mr. HARRIS], who seemed at a loss where to find the power it is proposed to exercise. He was so much at a loss that he went beyond the bounds he usually prescribes for himself in this Chamber, and indulged in unwonted

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jocularity. Not content with showing, as he supposed, that the power did not exist where it was said to exist, he asked, with ludicrous face, whether it was not found under the clause to guaranty a republican form of government. I am very glad to find that my excellent friend is looking to that clause of the Constitution. It is a clause very much neglected, but to my mind one of the most potent in the whole Constitution, — full of beneficent power, which it would be well, if the Government, at this crisis of its history, were disposed to exercise. Here are waters of healing for our distressed country. Follow this text in its natural and obvious requirements, and you will have security, peace, and liberty under the safeguard of that great guaranty, the Equal Rights of All.

But I must remind my friend that there is no occasion for any resort to this transcendent source of power at the present moment. The power from which this resolution is derived seems very obvious. My friend interrupts me to say that it is the war power. I say it is very obvious, and I will show him in a moment, that it is not the war power. It is a power that has been exercised constantly, from the beginning of our history, with regard to which there can be no question, — because it is embodied in one of the clearest texts of the National Constitution, — because it has been expounded by a series of decisions from our Supreme Court, which are among the most authoritative in our history. It is the power to regulate commerce. My friend smiles; but would he smile at the Constitution of his country?

"The Congress shall have power to regulate commerce with foreign nations and among the several States."

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By the present resolution it is clearly proposed to regulate commerce with foreign nations. Have not all regulations with regard to passengers been under this power? Have they not all been to regulate commerce with foreign nations? Can there be any doubt? Is it not as plain as language can make it? Why, Sir, ever since I have been in Congress we have had annual bills for the regulation of passengers coming into our ports, — bills of different degrees of stringency, laying one penalty here and another penalty there, all in the execution of this unquestionable power.

MR. GRIMES. Will the Senator be kind enough to look at the second clause of the amended proposition, where it says, —

"That he" —

that is, the Secretary of War —

"shall also enforce the establishment of sanitary cordons to prevent the spread of said disease from infected districts adjacent to or within the limits of the United States": —

not confining it to the lines between the States, but giving him authority to establish cordons within the jurisdiction of a State. I should like to know where the Constitution authorizes such a thing as that.

MR. SUMNER. I am obliged to my friend even for interrupting me to call attention to that section, though he will pardon me, if I do not answer him at this moment, but when I come to that part of the resolution.

MR. GRIMES. Any time will do, so that we get it.

MR. SUMNER. You will have it all.

I am dwelling now on the power derived from the positive text of the Constitution to regulate commerce with foreign nations. I say, that, in the execution of

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that power, we have undertaken to apply all manner of restrictions and regulations to the transportation of passengers. We have gone so far as to provide for the quantity of water on board each ship in proportion to every passenger. We have subjected every ship to regulations while at sea, and again to other regulations after arriving in port. The exercise of the power is by practice placed absolutely beyond question. Then it is intrenched in the very best judicial decisions of our country. I submit that no person can raise a question with regard to it.

MR. MORRILL. About regulating the importation of passengers from foreign countries nobody raises a question or a doubt. This is a question of quarantine, in its character police. Is there any precedent in the history of the United States where that power has been exercised by the General Government?

MR. SUMNER. I am very glad the Senator presses that question. I meet it. Does the Senator mean to suggest that the same power that can reach the sea, and determine even the quantity of water in the hold for each passenger, cannot apply the minutest possible regulation when that same ship arrives in the harbor?

MR. MORRILL. Will my friend allow me to answer him right there?

MR. SUMNER. Certainly.

MR. MORRILL. I maintain, that, when the passenger is landed, and comes within the limits and jurisdiction of the State, and within its police power, the commercial power of the Government ceases at that point, and the treatment of the passenger thereafter is within the police power of the State exclusively.

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MR. SUMNER. I think the Senator goes beyond the decision of the Supreme Court. He overrules that decision.

MR. MORRILL. I am precisely on a line with the License cases, in which the principle was applied to the importation of liquors.

MR. SUMNER. At a certain stage, I admit, the police power of the State may intervene; but I do nevertheless insist, as beyond question, that the power of the United States is complete over every passenger vessel arriving in the harbor, so that it may be subjected to any regulations in the discretion of Congress for the public good with reference to passengers. Of course, this discretion is to be exercised wisely for the public good, that the public health may not suffer. Strange, if the National Government, which is our guardian against foreign foes, may not protect us against this fearful enemy.

MR. MORRILL. I do not deny that; I agree to that.

MR. SUMNER. Very well.

MR. MORRILL. Now my query is, Can the power of commerce, that power which regulates the passengers on their passage to this country, follow the passengers entirely into the States and overrule the internal police of the States? That is the question.

MR. SUMNER. The Senator puts a question running into that already propounded by the Senator from Iowa, and to which I was coming in due course of time. I have already arrived at it. I was illustrating the power that the Government would have in the harbor; and now let me give another illustration, familiar to my friend: it is with reference to goods. I need not remind the Senator, that, when goods arrive, subject to duties, the custom-house exercises its control, accord-

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ing to the prescription of law, not only while the goods are water-borne, but after they have been landed; and if they have been landed in violation of the law, it pursues them even into the interior.

MR. CHANDLER. To the Rocky Mountains.

MR. SUMNER. It is enough to say that it pursues them into the interior. The National Constitution was not so absurd, nor have our courts been so absurd in its interpretation, as to recognize a power in the custom-house merely at the door of the granite structure, and to require that it shall stop there. No, Sir: the power must be made effective. We have made it effective with reference to goods. We have also, to a certain extent, made it effective, through decisions of the Supreme Court, with reference to passengers. It remains that we should carry it one stage further, and, for the public weal, and to secure the public health, which is a large part of the public weal, insist that this same power shall be invoked as in the pursuit of goods. I cannot see the difference between the two cases. I cannot doubt that the power over goods imported at our custom-house under Acts of Congress and the power over passengers introduced into this country under Acts of Congress are both derived from the same source, and you can find no limitation for one and no expansion for one which is not equally applicable to the other. I insist, therefore, that on this simple text you find ample power. You must annul the text, or at least limit it by construction and dwarf its fair proportions, or the power of Congress to provide against cholera is perfect.

But as Senators have such scruples about the second clause of the resolution, —

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"That he shall also enforce the establishment of sanitary cordons to prevent the spread of said disease from infected districts adjacent to or within the limits of the United States," —

I will add, this clause may be treated under two different heads, — first, as ancillary, from the nature of the case, to the power under the clause to regulate commerce with foreign nations. From the nature of the case, if you have the power to shut out cholera from the ports, you must be intrusted with an associate power to follow this same enemy even into the interior, precisely as you follow goods escaping the exercise of your power in the ports. I am willing, therefore, to put it even on the first clause of the constitutional provision, calling it simply ancillary. But I do not stop there; for, associated with this clause, and constituting part of the provision, are the words, "and among the several States." Congress has power to regulate commerce among the several States. Now, Sir, assuming that commerce is, as described or defined by our Supreme Court, intercourse among men, embracing the transportation, not only of goods, but of passengers, and applicable to everything that comes under the comprehensive term "intercourse," — giving to it that expansive definition which I think you will find in the decisions of the Supreme Court, I ask you if there is not under that second clause ample power also to regulate this matter. Congress has power to regulate commerce, communication, intercourse, transportation of freight and transportation of passengers among the several States. To make that effective, you must concede a power such as appears in the clause to which the Senator from Iowa has directed my atten-

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tion. There is no reference here to State lines; and why? From the necessity of the case. The disease itself does not recognize State lines. The authority which goes forth to meet the disease must be at least on an equality with the disease, and can recognize no State lines. How vain to set up State rights as an impediment to this beneficent power!

I therefore conclude that the power over this subject is plenary, whether you look at the first clause of the Constitution to which I have called attention, relating to foreign commerce, or the second clause, relating to commerce among the States. It is full; it is complete. Hence I put aside the constitutional objection, whether used seriously or jocosely, as it was perhaps by my friend from New York; I put it aside as absolutely out of the question and irrelevant. Congress has ample power over this whole subject. And, Sir, permit me to ask, if it had not ample power over it, where should we be as a government at this time? Can we confess that a great government of the world must fold its arms, and see a foreign enemy — for such it is — crossing the sea and invading our shores, yet we unable to meet it? I do not believe that this transcendent republic is thus imbecile. I believe, that, under the text of the National Constitution, as well as from the nature of the case, it has ample powers to meet such enemy.

And this brings me, Sir, to the proposed amendment of the Senator from Vermont [Mr. EDMUNDS]. He moves to strike out the clause to which I called attention the other day, and to substitute certain words creating a commission. I objected to this clause the other day; I will read it now: —

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"That it shall be the duty of the Secretary of War, with the coöperation of the Secretary of the Navy and the Secretary of the Treasury, whose concurrent action shall be directed by the Commander-in-Chief of the Army and Navy, to adopt an efficient and uniform system of quarantine against the introduction into this country of the Asiatic cholera."

I objected, it may be remembered, to this clause, as placing the bill under the patronage of the war power. I did not think it needed that patronage, though I was willing to admit that it might need sometimes the exercise of the war authority; but I did not think it needed to be derived from the war power. It was not from the nature of the case an exercise of this power, but it was clearly derived from the power over the commerce of the country; and I regretted, therefore, that the framers of the bill had seemed to put the war power in the forefront. The Senator from Vermont meets that suggestion by an amendment to the effect that a commission shall be constituted, embracing the Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury. I have no particular criticism to make upon the amendment. If the Senate consent to it, I shall certainly be disposed to join. But I think a better form still may be adopted, and one placing what we do more completely and unreservedly under that power of the Constitution from which I think it is derived, — that is, the power to regulate commerce. I would therefore propose that the duty shall be confided primarily to the Secretary of the Treasury, who, in the exercise of his powers, shall be aided by the Secretary of War and the Secretary of the Navy, under the direction of the President of the United States.

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. . . . . .

In making this change, we shall simply enlarge and expand the existing powers of the Secretary of the Treasury. He is now the head of the custom-house; he regulates the passenger system. Go further, and give him these additional powers, that shall enable him, so far as he can, to prevent the introduction of disease into the country. All that we do will be in harmony with the practice of the Government, and I believe above question. The Government, in the exercise of admitted powers, will be, I trust, more than a match for the cholera.

May 15th, Mr. Reverdy Johnson replied, when Mr. Sumner rejoined: —

THE Senator from Maryland has referred us to the decisions of the Supreme Court which in his opinion bear directly on this point; but, Sir, with the ingenuity of a practised lawyer, he has omitted to remind us of that decision which, perhaps, of all others, is the most applicable. With the permission of the Senate, I will make up for the deficiency of the learned Senator, or at least endeavor to do so. I refer to the case of *The United States* v. *Coombs*, in the twelfth volume of Peters's Reports. There you will find one of the able and well-considered judgments of the late Mr. Justice Story, particularly treating this question. By "this question" I mean the power of Congress under the National Constitution to regulate commerce with foreign nations and among the several States. I will read a passage from his judgment, page 78: —

"The power to regulate commerce includes the power to regulate navigation, as connected with the commerce with

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foreign nations and among the States. It was so held and decided by this court, after the most deliberate consideration, in the case of *Gibbons* v. *Ogden*, 9 Wheaton, 189 to 198."

All that the Senator will of course recognize; for, indeed, he has admitted as much in what he has said and cited. The learned judge then proceeds: —

"It does not stop at the mere boundary-line of a State; nor is it confined to acts done on the water, or in the necessary course of the navigation thereof. It extends to such acts, done on land, which interfere with, obstruct, or prevent the due exercise of the power to regulate commerce and navigation with foreign nations and among the States. Any offence which thus interferes with, obstructs, or prevents such commerce and navigation, though done on land, may be punished by Congress, under its general authority to make all laws necessary and proper to execute their delegated constitutional powers."

Those are the pointed words of Mr. Justice Story.

Mr. Morrill. Will the Senator allow me to ask him a question?

Mr. Sumner. Certainly.

Mr. Morrill. That is, to regulate commerce.

Mr. Sumner. To regulate commerce.

Mr. Morrill. Does the Senator mean to be understood that a regulation in regard to cholera, a disease, is a regulation of commerce?

Mr. Sumner. I do, certainly.

Mr. Morrill. Then the cholera is commerce?

Mr. Sumner. No; cholera is not commerce, but cholera comes from passengers.

Mr. Morrill. Then is the regulation of it commerce, or

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is it the treatment of a disease? Is it a regulation of health, or a regulation of commerce?

MR. SUMNER. It is connected with commerce, and must be treated in its appropriate connection.

. . . . . .

Nor do I understand that this is an exercise of power for the first time. It is nothing more than a new application of an old power, or an expansion of an old power to a new condition of circumstances, and perhaps I may say enlarging the old power, because the circumstances require the enlargement. I do not understand that any new fountain is opened. No new source is drawn upon; no new principle is invoked. We go back to the original text so often applied in kindred cases, and insist upon its application now.

If I understand the argument of the Senator, it is that all quarantine regulations belong to the States exclusively. Am I right in that?

MR. MORRILL. Most of them.

MR. SUMNER. The Senator, I understand, says they belong exclusively to the States.

MR. MORRILL. Yes.

MR. SUMNER. If I carry the idea of the Senator still further, it would be to say that the Government of the United States might make all possible regulations with reference to passengers water-borne, but could not touch them with any sanitary regulation the moment they entered our harbors. Such is the inevitable conclusion; and permit me to say, it is an absurdity. I will not consent thus to despoil the National Government of a power which to my mind seems so essential to the national health.

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After quoting the statute of February 25, 1799, entitled "An Act respecting Quarantines and Health Laws," by which United States officers are directed to assist State officers in enforcing the quarantine, Mr. Sumner proceeded: —

Now I submit that this statute of 1799 relating to quarantine contains a jumble or confusion not unlike that in the Fugitive Slave Act of 1793, — that is, a recognition of a concurrent jurisdiction in the State and National Governments over this question. The measure now before the Senate would follow out the general principle or reasoning of later years, and assure the jurisdiction to the Federal, or, as I always like to call it, the National power. It would secure it to the National power; and to my mind it properly belongs to the National power, and no ingenuity of the Senator from Maine can satisfy me that it should not be intrusted to the National power. It is essentially a National object, and can be performed effectively and thoroughly only through the National arm. If you intrust it to the different local authorities, you will have as many systems as you have States or communities, and you cannot bring your policy to bear with that unity which it ought to have in dealing with so deadly a foe. You should be able to carry into this business something of the combination and directness of war. At the same time I beg to say, as I have heretofore said, that I do not recognize this in any respect as a military remedy. I treat it absolutely as commercial; I derive it from a commercial power; and by the amendment which I have introduced I would place it under the direction of the Secretary of the Treasury.

The amendment of Mr. Sumner was agreed to without a division. The substitute of the Committee, thus amended, was lost, — Yeas 17,

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Nays 19. The original House resolution was then amended in conformity with Mr. Sumner's amendment, by inserting "Secretary of the Treasury" instead of "President," and passed, — Yeas 27, Nays 12, — and afterwards approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 357.

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RANK OF DIPLOMATIC REPRESENTATIVES ABROAD.

SPEECHES IN THE SENATE, ON AN AMENDMENT TO THE CONSULAR AND DIPLOMATIC BILL, AUTHORIZING ENVOYS EXTRAORDINARY AND MINISTERS PLENIPOTENTIARY INSTEAD OF MINISTERS RESIDENT, MAY 16 AND 17, 1866.

MAY 16th, the Senate having under consideration the bill making appropriations for the consular and diplomatic expenses for the ensuing year, Mr. Sumner moved the following amendment: —

"*Provided*, That an envoy extraordinary and minister plenipotentiary appointed at any place where the United States are now represented by a minister resident shall receive the compensation fixed by law and appropriated for a minister resident, and no more."

Mr. Sumner then said: —

I SHOULD like to make a brief explanation of this amendment. It will be perceived that it comes after the appropriation for salaries of envoys extraordinary and ministers plenipotentiary and ministers resident. Its object, in one word, is to authorize the Government, in its discretion, to employ persons with the title of envoy extraordinary and minister plenipotentiary where it now employs ministers resident, but without any increase of salary. This subject has occupied the attention of the Committee on Foreign Relations for several years; it has been more than once before the Senate. The Committee were unanimous that

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the good of the service, especially in Europe, required this change. From authentic information it appears that our ministers at courts where they have only the title of ministers resident play a second part to gentlemen with the higher title, though representing governments which we should not consider in worldly rank on an equality with ours. They are second to them; in short, to use a familiar illustration, and simply to bring the difference home, when they call upon business or appear anywhere, they bear the same relation to the envoys extraordinary of those smaller governments that a member of the other House, calling upon the President, bears to Senators. The Senator is admitted, when the member of the other House, as we know, waits.

I hold in my hand the last Almanac of Gotha, for 1866, which is the diplomatic authority for the world, and has been for a century; and, by way of example, I turn to the diplomatic list for the Netherlands, where, it will be remembered, we are represented by a patriotic citizen, well known to most of us, who was once connected with the press, — Mr. Pike, — with the title of minister resident. According to the list, I find at this same court the Grand Duchy of Baden represented by an envoy extraordinary and minister plenipotentiary; Belgium, the adjoining country, and with a population much inferior to our own, represented by an envoy extraordinary and minister plenipotentiary; Denmark, a nation which, shorn of the two provinces of Schleswig and Holstein, has little more than a million and a half of population, represented by an envoy extraordinary and minister plenipotentiary. Spain, of course, is represented by an envoy extraordinary and

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minister plenipotentiary. Even the Grand Duchy of Hesse is so represented; so is the kingdom of Italy; so is the Duchy of Nassau; so is Portugal; so is Prussia; and so others. In transacting business, the American minister resident at this court is always treated as second to these representatives. I have alluded to the relations we bear to the head of the Executive Department here, as compared with members of the other House. I doubt not that Senators know there is a positive business advantage in having access promptly, and perhaps with a certain consideration which does not always attach to those of inferior rank.

. . . . .

It will be observed that the proposition does not undertake to empower the President, or to direct him, to make this change; but it assumes, according to a certain theory of the Constitution, that under the Constitution it is in the discretion of the President to send ambassadors, envoys extraordinary, or ministers resident, or any other diplomatic functionary, in his discretion, Congress having only the function of supplying the means.

. . . . .

Now the proposition which I have moved proceeds, in harmony with this, simply to declare, that, if the President shall undertake to appoint an envoy extraordinary and minister plenipotentiary to any court where we are now represented by a minister resident, the salary shall be only that of a minister resident. Proceeding with the theory of this Act and a certain theory of the Constitution, the President has the power already to appoint an envoy extraordinary and minister plenipotentiary to any of these courts, if in his discretion

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he shall see fit; but there is no salary appropriated by law. If the amendment now offered should be adopted, it would be in his discretion to change our representative from a minister resident to an envoy extraordinary, but without increase of salary; and the simple question remains, whether this enabling discretion is not proper. The President is not called upon to exercise it. There are places where he may think it better to continue the minister resident.

MR. FESSENDEN. He can do it now.

MR. SUMNER. But there is no salary; the salary would not apply. The amendment is to supply the salary in such cases; that is all. I have heard it observed, that, though the President may now, under the Constitution, appoint to any place an envoy extraordinary and minister plenipotentiary, he is restrained in the exercise of that power by the want of an appropriation to support the appointment. The present proposition meets that difficulty precisely.

The amendment was opposed by Mr. Fessenden, of Maine, and Mr. Grimes, of Iowa. Mr. Sumner replied: —

I HAVE no feeling on this question at all, — not the least; nor do I approach it as a political question. I see no individual in it. I do not see Mr. Harvey or Mr. Sanford. I see nobody here to oppose, and nobody to favor. I know nothing in it but my country and its service abroad. Sir, I think I am as sensitive as any other Senator with regard to the just influence belonging to my country as a republic great and glorious in the history of mankind. I believe that I am duly proud of it, and conscious of the weight it ought to carry

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wherever it appears. I know its name stands for something in the world, and that whoever represents this country on the ocean or in the diplomatic service has, alone, a great and powerful recommendation. But I also know too much of human history and too much of human nature, not to know that men everywhere are influenced more or less by the title of those who approach them.

MR. FESSENDEN. Governments are not; men may be.

MR. SUMNER. But let me remind my friend that governments are composed of men. He knows well that the presence of a general on a particular service produces more certain effect and prompter result than the presence of a colonel or a major, at least under ordinary circumstances. My other friend, who represents the Naval Committee on this floor [Mr. GRIMES], knows very well, that, if he sends an admiral on any service, it may be only of compliment, he produces at once a greater effect than if he sends a lieutenant.

The Senator has just induced us to send the Assistant Secretary of the Navy to Europe, because in that way he might give more *éclat* to a certain service. I united with him in the effort. But why not allow a clerk of the Department to carry our resolution? The Senator knew full well, if he sent the Assistant Secretary of the Navy, he should do more than if he sent a simple clerk of the Department. And therefore I am brought to the precise point, that, whatever the rank of our country in the world, and how much soever we may be entitled, at all courts where our representatives are, to the highest precedence, yet, such is human nature, our position is impaired by the title of

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the agent we send. I would give our agent the artificial accessories and incidents which the Law of Nations allows. I follow the Law of Nations. Why does this law authorize or sanction, and why do our Constitution and statutes, following the Law of Nations, authorize and sanction, a difference of rank, except to obtain corresponding degrees of influence? That is the theory which underlies the gradation of rank. It runs into the army; it runs into the navy; it runs into Congress; it runs into all the business of life; and the simple question is, whether now, in the diplomatic service of the country, in dealing with our foreign agents, we shall discard a principle of action followed in everything else.

The amendment was rejected, — Yeas 15, Nays 17.

May 17th, Mr. Sumner renewed his effort, by moving the amendment in the following form: —

"*And be it further enacted*, That the salary of any envoy extraordinary and minister plenipotentiary hereafter appointed shall be the salary of a minister resident, and nothing more, except when he is appointed to one of the countries where the United States are now represented by an envoy extraordinary and minister plenipotentiary."

After explaining it, Mr. Sumner said, especially in reply to Mr. Grimes: —

I DO not like to discuss things forever that have been discussed so often. I have said so much on this matter that I feel ashamed to add another word; and yet, as the Senator from Iowa returns to the assault, perhaps I should return to the defence.

I tried to show, last evening, that, in introducing this proposition, I was simply acting on the practice of the Government in other respects, and upon the practice of mankind generally, everywhere; and my friend from

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Ohio [Mr. WADE] reminds me that the argument of the Senator from Iowa, a few days ago, was one of the strongest illustrations of what I said. He induced the Senate to agree to appoint a new Assistant Secretary of the Navy, merely to allow the actual Assistant Secretary to go abroad, because his presence would enhance the service. Under his argument, yielding to its pressure, we appointed a new functionary in the Department of the Navy.

Now, if I can have the attention of the Senator from Iowa for one moment, I would put him a practical question. If he had important business, say with the mayor of New York, which he wished to present in the best way possible, I have no doubt my friend would count naturally upon his own character, and justly; he would believe that any agent sent by him to the mayor of New York would be well received. Doubtless he would be well received; yet, if there were two persons whose services he might employ, one with the rank of general and the other with the rank of colonel, but equal in abilities and in fitness, I have no doubt my friend would select the general rather than the colonel. From familiarity with human nature, he knows that the general, on arrival, would have a prompter reception than the colonel. It is useless to say, in reply, that behind the agent is the same personage. I assume all that; but I would secure for that same personage the best reception possible, and the highest facilities for his representative. I would now secure the same thing for my country, and I believe — pardon me, if I introduce my own personal testimony — but I believe, according to such opportunities of observation as I have had, now running over a

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considerable period of life, that the interests of the country would be promoted by this change. I believe that business would be facilitated, and opportunities of influence enhanced.

I make no allusion to topics playfully introduced into this discussion. It is a matter of comparative indifference what place a man may have at a dinner-table; but I do wish to secure facilities in business and respect for the representatives of my country to the largest degree possible.

The amendment was adopted, — Yeas 18, Nays 16.

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OFFICE OF ASSISTANT SECRETARY OF STATE, AND MR. HUNTER.

REMARKS IN THE SENATE, ON AN AMENDMENT TO THE CONSULAR AND DIPLOMATIC BILL, CREATING THE OFFICE OF SECOND ASSISTANT SECRETARY OF STATE, MAY 16 AND 17, 1866.

MAY 16th, the Senate having under consideration the bill making appropriations for the consular and diplomatic expenses, Mr. Sumner moved an addition of twenty per cent. to the compensation allowed to the clerks of the State Department. A petition from the clerks was read. Mr. Sumner then said: —

I DO not know that there is any necessity for me to add anything. The petition speaks for itself. It states the whole case. But a word will not be out of place with regard to the gentleman who heads the petition, — Mr. Hunter. He is one of the oldest public servants now connected with the Government. He has been in the Department of State for more than thirty years. He may be called the living index to that Department; and I believe I do not err in saying that in our Blue Book of office there is no person whose integrity is more generally recognized. Placed in a position of especial trust, where all the foreign correspondence of the Government passes under his eye, that which comes and that which goes, I believe he has passed a life without blame. He has been in a position where, had his integrity been open to seduc-

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tion, he might have been tempted. No human being imagines that he has ever yielded. He has discharged his very important trusts on a very humble salary. I think the Senator from Maine [Mr. FESSENDEN] knows him well enough to know that he has brought to those functions ability of a peculiar character. And now, in the decline of life, he finds himself with the small salary of a clerk, on which he can with difficulty subsist, — and yet all the time rendering these important services and discharging these considerable trusts, absorbed in the business of the office so that he takes it home with him nightly. It leaves with him in the evening and returns with him in the morning, and then it fills the long day. I think that such a public servant deserves recognition. I have for some time felt that his compensation was inadequate. I have thought that his salary ought to be raised; but, after consideration of the question in committee, and consultation with others, it was thought best to present the case in a general proposition such as I have now moved, being for the addition of twenty per cent. to the compensation of all the clerks in the Department. The argument for this is enforced in the petition from these gentlemen which has been read at the desk. I can see no objection to it, especially after what we have done for the clerks of the Treasury. Are not public servants at the State Department as worthy as public servants at the Treasury?

The debate showed the indisposition of Senators to any general addition to the compensation of the clerks of the State Department, but with recognition of the merits of Mr. Hunter.

May 17th, after conversation and discussion, Mr. Sumner changed his motion, so as to read: —

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"*And be it further enacted*, That the President be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a second Assistant Secretary of State in the Department of State, at an annual salary of $3,500, to commence on the first day of July, 1866; and the amount necessary to pay the same is hereby appropriated."

Mr. Sumner then said: —

A SENATOR near me says he will not vote for this amendment, unless I put in the name. It is perfectly well known that it is intended as an opportunity to appoint Mr. Hunter, and the authorities, I presume, will take notice. There is no need of inserting his name; and the remark of the Senator is simply a criticism for an excuse. I hope the Senate will adopt the amendment without a division.

There was a division, and the amendment was adopted, — Yeas 18, Nays 17.

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DELAY IN THE REMOVAL OF DISABILITIES.

LETTER TO AN APPLICANT, MAY, 1866.

THIS letter was originally published in a Southern paper, but without the date.

SENATE CHAMBER [May, 1866].

DEAR SIR, — I have your letter of the 19th in reference to the removal of your political disabilities.

I am not sure that the time has yet come to make exceptions to our general policy in individual cases. To do so would open the door to innumerable applications; and once open, it would be difficult to shut it.

I hope to meet such cases as yours by some general enactment; and as soon as the condition of the country will permit, I shall be the first to advocate the removal of all disabilities under which you labor at present.

Yours truly,

CHARLES SUMNER.

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INTERRUPTION OF RIGHT OF PETITION.

REMARKS IN THE SENATE, ON THE WITHDRAWAL OF A PETITION FROM CITIZENS OF VIRGINIA, MAY 24, 1866.

MR. TRUMBULL, of Illinois, recently presented a petition from citizens of Augusta County, Virginia, which was duly referred, stating that the Union men in that locality were without protection from the local authorities, and asking that the military power be not withdrawn. The petition caused excitement in the neighborhood, accompanied by threats. Mr. Trumbull had asked to withdraw the petition and return it to the petitioners, "that they may protect themselves, as far as this will enable them to do so, against the accusations which have been brought upon them," and expressed his regret that he could not propose some measure for their protection.

Mr. Sumner said: —

MR. PRESIDENT, — I hope the Senate will not take this step without considering its importance. I do not mean to oppose it, but I would ask attention to what I may call its gravity. I am not aware that a petition has ever before been withdrawn on a motion like that now made. A petition once presented comes into the possession of the Senate; it passes into its files, and into the archives of the Capitol. We are about to make a precedent for the first time. I do not say that the occasion does not justify the precedent. I incline to agree with my friend from Illinois. We owe protection, so far as we can afford it, to these petitioners; and since the Senator from Illi-

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nois regards this as the best way, I am disposed to follow him; but in doing it, I wish the Senate to take notice of the character of the step, and of the precedent they make.

But this is not all, Sir. I wish the Senate to take notice that they are called to adopt this exceptional precedent by the lawless and brutal condition of the social system about these petitioners. The very fact which the Senator brings to the attention of the Senate, and on account of which he invokes an unprecedented exercise of power, is important evidence on the condition of things in one of these Rebel States. It goes to show that they are not yet in any just sense reconstructed, or prepared for reconstruction. Such an abnormal fact could not occur in any other part of our broad country. That it occurs here must be referred to remains of Rebellion not yet subdued, but which you are now called upon, in the exercise of powers under the National Constitution, to overcome and obliterate.

Therefore, Sir, I regard this transaction in a double light: first, as an important precedent in the business of the Senate; secondly, as illustrating a condition of things to justify every exercise of care and diligence on our part, that it may not bring forth similar fruits hereafter. The right of petition, a great popular right, cannot be interrupted without a blow at the Constitution.

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OFFICIAL HISTORY OF THE REBELLION.

REMARKS IN THE SENATE, ON A JOINT RESOLUTION TO PROVIDE FOR THE PUBLICATION OF THE OFFICIAL HISTORY OF THE REBELLION, MAY 24, 1866.

MAY 24th, on motion of Mr. Wilson, of Massachusetts, the Senate considered a joint resolution to provide for the publication of an official history of the Rebellion. In the debate that ensued, Mr. Sumner said: —

MR. PRESIDENT, — We have already in our history some experience by which we may be taught on this question. Senators have seen in their libraries, certainly in the Congressional Library, the large volumes known as "American Archives," of which there are portions of two series. When that collection was commenced, it was intended that it should embody all the papers, military and diplomatic, and also leading articles in newspapers, relating to the origin of our Revolution and the War of Independence. The collection proceeded to the year 1776, under the editorship of Peter Force, of this city, a gentleman as competent, I suppose, as any person who could have been selected in the whole country; but it was subject to the revising judgment of the Secretary of State. Finally, when Mr. Force had prepared a volume for 1777, and his papers were collected and laid before the Secretary of State, at that time Mr. Marcy, the latter functionary

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refused his assent to any further publication, and the collection, originally ordered by Act of Congress,[1] was arrested at the year 1776, and primarily because the Secretary of State declined to give his final assent, as required under a subsequent Act.[2] Such is our experience with regard to one important portion of our history, the War of Independence. The documents are not yet published in one connected series; I do not know that they ever will be. And now, Sir, it is proposed to commence another series, promising more expense even than that of the War of Independence.

I would simply suggest that we may well consider whether it might not be advisable to complete the original series, and to illustrate the War of Independence, before we enter upon the work of illustrating this recent more terrible conflict. But, Sir, suppose we undertake the latter work; then I think all that has been said, particularly by the Senator from Maine [Mr. FESSENDEN], suggesting caution, care, and editorship, of infinite importance. I agree with that Senator absolutely, when he says the whole collection will be of very little value, it will be trivial, if not well edited, well arranged, and then well indexed.

MR. FESSENDEN. And the larger it is, the worse it will be.

MR. SUMNER. Of course. Then Senators say that we must find a competent man. Who is the competent man? I do not know him now. I dare say he might come to light, perhaps, if we went about with a lantern after him; but the competent man to gather

[1] Act, March 2, 1833: Statutes at Large, Vol. IV. p. 654.
[2] Act, March 3, 1843: Ibid., Vol. V. p. 641.

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together all this mass of documents, to put them in order, and then to make a proper analytical index, would be a very rare character. He must be a man without the turbulent ambition that belongs to politicians, — disposed to quiet, willing to live at home with his books and papers, and give himself day and night to serious toil. That is the character of man you would require. I do not know where he could be found.

MR. JOHNSON [of Maryland]. You might find him in Boston.

MR. SUMNER. In Boston, if anywhere, perhaps. [*Laughter.*] But I do not know him there, I am free to say.

MR. FESSENDEN. Resign, and take charge of it yourself. [*Laughter.*]

MR. SUMNER. I do not know but that is the best thing I could do [*laughter*]; but then I should despair of getting through the work.

MR. FESSENDEN. I would agree to serve as your clerk.

MR. SUMNER. Then the work would surely be done. [*Laughter.*]

All this brings us to the conclusion that what we do should be well considered and laid out in advance. I think, therefore, it is important that the resolution should be recommitted, that we should have the benefit of all the information we can obtain from the Department, and, if possible, provide in advance the method, the arrangement, and the way in which the collection should be indexed. As much should be done in advance as possible. Sir, we may derive instruction on this subject from what is doing in other nations. At this moment the French Emperor is publishing the writings of his uncle, the Emperor Napoleon. The

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collection has already proceeded to nineteen or twenty quarto volumes, elaborately edited, the purpose being to bring together every scrap, military, diplomatic, or personal, which can be found proceeding from the First Napoleon. All is under special editorship. Some of the first men of France are a committee superintending it. If we undertake our work, I think we ought to do as well by it as the Emperor of France does by the writings of his uncle.

The joint resolution was recommitted to the Committee on Military Affairs and reported back with an amendment. It finally passed both Houses, and was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 369.

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EQUAL RIGHTS A CONDITION OF RECONSTRUCTION.

AMENDMENT IN THE SENATE TO A RECONSTRUCTION BILL, MAY 29, 1866.

APRIL 30th, Mr. Fessenden, from the Joint Committee on Reconstruction, reported a bill "to provide for restoring to the States lately in insurrection their full political rights." There was no requirement of Equal Rights as a condition of Reconstruction.

May 29th, Mr. Sumner introduced the following amendment as a substitute for the first section of the bill: —

THAT, when any State lately in rebellion shall have ratified the foregoing Amendment, and shall have modified its constitution and laws in conformity therewith, and shall have further provided that there shall be no denial of the elective franchise to citizens of the United States because of race or color, and that all persons shall be equal before the law, the Senators and Representatives from such State, if found duly elected and qualified, may, after having taken the required oaths of office, be admitted into Congress as such: *Provided*, that nothing in this section shall be so construed as to require the disfranchisement of any loyal person who is now allowed to vote.

The bill was never called up after the printing of this amendment.

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INTER-STATE INTERCOURSE BY RAILWAY.

REMARKS IN THE SENATE, ON THE BILL TO FACILITATE COMMERCIAL, POSTAL, AND MILITARY COMMUNICATION IN THE SEVERAL STATES, MAY 29, 1866.

A MEASURE relating to inter-State intercourse, especially by railway, which had been considered by a former Congress, reappeared in the present Congress. The bill of Mr. Sumner, "to facilitate commercial, postal, and military communication among the several States,"[1] was introduced into the House of Representatives and adopted, with a proviso touching stipulations between the United States and any railway company. In the Senate it was considered from time to time.

May 29th, the following additional proviso, moved by Mr. Clark, of New Hampshire, was adopted, — Yeas 24, Nays 15 : —

"Nor shall it be construed to authorize any railroad company to build any new road or connection with any other road, without authority from the State in which said railroad or connection may be proposed."

On the third reading of the bill, Mr. Sumner said : —

I AGREE with the Senator from Pennsylvania [Mr. COWAN], that the measure before us is important: whether so transcendently important as he depicts I do not venture to say. But, Sir, I believe it a beneficent measure, and important from its very beneficence.

The bill as originally presented was complete and simple. I think it met the idea so ably set forth by the Senator from Ohio [Mr. SHERMAN]. Were the bill

[1] See, *ante*, Vol. IX p. 237.

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adopted in that form, it would be truly beneficent. It would prevent any State from becoming a turnpike-gate to the internal commerce of the country.

No State, I insist, has a right to take toll on the internal commerce of this great republic, and it belongs to the United States, under the National Constitution, to regulate that internal commerce. It was in the exercise of that power, under the National Constitution, and also of other powers, as the power to regulate the post-office, and also the military power, that this bill was conceived. I say, Sir, in every respect it is beneficent. It has been to-day ably and conclusively vindicated by the Senator from Ohio. On other occasions I have considered it. I feel now that there is little occasion for any further elaborate discussion. I regret, Sir, with the Senator from Ohio, that the amendment of the Senator from New Hampshire has been fastened upon it. I wish it were in our power now to give the bill its original force and virtue. But, even with that amendment, it is better than nothing. It does something. It goes forth and does battle with a monopoly in at least one State of the Union which was in view when the bill was first presented. It is also a precedent for the future action of Congress, and it will open the way to what the Senator from Ohio so earnestly desires.

I shall be glad hereafter to act with him in carrying out the original purposes of this bill, so that no State shall be able to set itself in the way of the internal commerce of the country. But, considering that the amendment is already attached to the bill, that we have now passed the stage when it would be advisable to open the discussion again, I hope the Senate will

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proceed to its final passage. Though shorn of some of its virtue, it is better than nothing; it will do much good. Even in its present form it is essentially beneficent. Therefore I hope it will be adopted.

The bill passed the Senate, — Yeas 22, Nays 19, — and was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 66.

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ATTITUDE OF JUSTICE TOWARDS ENGLAND.

REMARKS IN THE SENATE, ON THE BILL FOR THE RELIEF OF THE OWNERS OF THE BRITISH VESSEL MAGICIENNE, JUNE 26, 1866.

JUNE 26th, on motion of Mr. Sumner, the Senate proceeded to consider the bill for the relief of the owners of the British vessel Magicienne. The bill directed the payment of $8,645 to these owners for damages from the wrongful seizure and detention of that vessel by the United States ship Onward, in January, 1863.

Mr. Sumner said: —

BEFORE the vote is taken, I desire that the Senate should understand the character of the bill. The Senate may have forgotten that a message of the President, bearing date April 4, 1866, communicated to the two Houses of Congress the correspondence between the Government of the United States and the Government of Great Britain relating to this vessel. By that correspondence it appears that the United States, through Mr. Seward, and the Government of Great Britain, through Lord Lyons, came to an agreement, in 1863, to refer the question of damages in this matter to Mr. Evarts, the eminent counsel at New York, and Mr. Archibald, the British consul at New York. Those two referees have proceeded with the business and made a report, which forms the basis of this bill. I call particular attention to the dates, as they had an

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influence on the judgment of the Committee. I need not remind the Senate, that, at a later day, Lord Russell, in a formal manner, declined all arbitration of our claims on Great Britain. That was by a communication to Mr. Adams, our minister at Great Britain, bearing date August 30, 1865. All will remember the terms of that note, which have been substantially set forth in the annual message of the President. Had the case of this vessel arisen subsequently to the note, it would have been a grave question whether the Committee could have counselled any present recognition of the claim; but it was otherwise. The case occurred and the referees were selected before the note. Under the circumstances, there was no alternative. We had selected our court, and the damages were determined by the judgment of that court. It only remains for us to abide by the judgment of the tribunal we have assisted in establishing.

Mr. Conness, of California, said: —

"I have great confidence in the Committee on Foreign Relations. I know the sense of justice of that Committee, and of the Chairman of that Committee, and have great respect for it; but I cannot vote to pay any British claim in the face of the insulting response made by the British Government to the proposition even to consider American claims."

Mr. Sumner replied: —

I make no question with the Senator from California with regard to the reply of Lord Russell. . . . . I see that to pay the bill goes against the grain of the Senator; but I believe he, too, is not insensible to the claims of equity. While I have no doubt how the conduct of Great Britain with regard to our losses should be characterized, I am anxious that my own

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country should be kept firm and constant in the attitude of justice.

The bill passed both Houses without a division, and was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 601.

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POWER OF CONGRESS TO MAKE A SHIP-CANAL AT NIAGARA.

REMARKS IN THE SENATE, ON A BILL TO INCORPORATE THE NIAGARA SHIP-CANAL, JUNE 28, 1866.

JUNE 28th, the Senate took up a bill from the House to incorporate the Niagara Ship-Canal, and the first question was on the following amendment, reported by the Senate Committee on Commerce : —

"SECTION 28. *And be it further enacted*, That this Act shall not take effect, unless the Legislature of the State of New York shall within one year of the date hereof give its assent thereto."

In the debate that ensued, Mr. Sumner said : —

MR. PRESIDENT, — The Senator from Kentucky [Mr. GUTHRIE] gives his judgment in favor of the proposed ship-canal, but he gives his argument against it. He is in favor of delay, and the reason he assigns is, that the country is already encumbered by a large national debt, which we should not increase by any additional expenditure; and he asks, with a triumphant air, whether it has ever before been proposed to reduce a national debt by increasing it. But his question does not meet the case. It is proposed, so far as I understand, to provide additional resources. To that end additional expenditure will be incurred. Out of the additional resources there will be increased

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means for the payment of the national debt. This is the answer to the Senator; and as I understand him to make no other special objection to proceeding with the matter now, I feel that he is completely answered.

I confess, however, Sir, that what fell from the Senator from Iowa [Mr. GRIMES] produced more impression on my mind. His objection to the execution of this work by a corporation, and to allowing that corporation to establish tolls which the people of his State and of other States at the West should be obliged to pay, certainly deserves attention.

MR. SHERMAN. And there is the water power.

MR. SUMNER. Which is to be given to this corporation. I say it deserves attention. But I think the Senator is mistaken, when on that account he interposes the dilatory motion asking the bill recommitted. I do not know that at a subsequent stage of the debate it may not be important to recommit it; but I believe that at this moment we had better proceed with the bill, and have a vote of the Senate on the amendment reported by the Committee. For one, I wish an opportunity, and the sooner the better, to vote against that amendment. Senators about me say, so do they. Let us, then, proceed with the bill; and I hope the Senate will vote down the amendment which is to invite the consent and coöperation of the State of New York. On that question the Senate should establish a precedent.

The time has come for us to assert the powers of the National Government, independent of the States, in certain cases. The argument in this debate has

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gone very much on the military power of the Government, little allusion being made to that other source of power which seems to me so ample, — the power to regulate commerce among the States. I prefer to found this power upon that text of the National Constitution. I ask Congress to interpose its power to regulate commerce among the States, — to interpose it on a great occasion, under circumstances, I admit, of special responsibility, when I consider the time and the occasion, but under circumstances which amply justify the exercise of the power. Who, Sir, can doubt, that, under these special words of the National Constitution, we have full power over this whole question? Who can doubt, that, without asking consent of New York, we may establish a canal about the Falls of Niagara? I am at a loss to understand how any Senator can hesitate as to the power of Congress.

Assuming, then, that Congress has the power, the only remaining question is as to the expediency of exercising it at this time; and that again brings me to the argument of the Senator from Kentucky, that at this time, when we are involved in a large national debt, we should not undertake to increase it. But to this I have already replied.

I hope, Sir, there will be no delay, — that the Senate will proceed with the bill at once. The question is great; it is important; it is almost historical; it is nothing less than to determine whether the northern shores of Ohio and Illinois shall be brought forward to the ocean itself, so that the large towns there shall become ports of the sea. By this ship-canal Chicago and Cleveland may be made harbors on the Atlantic coast. Sir, that is an object well worthy of an honest

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ambition, and I ask the Senate without delay to do what it can for the great result.

After debate, the bill was postponed to the second Tuesday of December. Though considered at the next session, there was no final action upon it.

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HONOR TO A CONSTANT UNION-MAN OF SOUTH CAROLINA.

REMARKS IN THE SENATE, ON A JOINT RESOLUTION TO AUTHORIZE THE PURCHASE FOR CONGRESS OF THE LAW LIBRARY OF THE LATE JAMES L. PETTIGRU, OF SOUTH CAROLINA, JULY 3, 1866.

JULY 3d, the Senate having under consideration a joint resolution, reported by the Library Committee, appropriating five thousand dollars for the purchase of the law library of the late James L. Pettigru, of South Carolina, Mr. Sumner said: —

I SEE no objection to this proposition on grounds of constitutional power. I cannot doubt the power. Had I been called to vote, when under consideration some weeks ago, I should have voted in the negative. I was disposed at that time to look at the purchase simply as a question of economy. Since then I have been led to regard it in that other aspect presented by the Senator from Wisconsin [Mr. HOWE], and I hesitate to vote against it.

I have gone over the catalogue of the library. It is a respectable library for a practising lawyer. Some of the books are valuable, others may be useful as duplicates.

But in voting this sum I do not expect an equivalent in the books. I would make the purchase an occasion of expressing sympathy with courage and fidelity under peculiar difficulties in the cause of our country.

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Mr. Pettigru was like the angel Abdiel, "among the faithless faithful only he." In the State of South Carolina, and in Charleston itself, he continued true to the Union in all its trials, early and late, — first, in those days when it was menaced by Nullification, and then again when it was openly assailed by bloody Rebellion. He died in virtuous poverty, and I am willing that Congress should make this contribution to his widow. Such a character is an example of infinite value to the Republic. I wish to show my respect for it. I should be glad to see it exalted so as to be seen by men. In the deserts of the East a fountain is always cherished as a sacred spot; such a character was a fountain in the desert. What desert more complete than South Carolina?

The joint resolution passed both Houses, and was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 365.

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OPEN VOTING IN THE ELECTION OF SENATORS; SECRET VOTING AT POPULAR ELECTIONS.

SPEECH IN THE SENATE, ON THE BILL CONCERNING THE ELECTION OF SENATORS, JULY 11, 1866.

THE case of Senator Stockton, and the questions which then arose with regard to the election of Senators, suggested the necessity of legislation by Congress on this subject. Accordingly a bill was reported from the Judiciary Committee, "to regulate the times and manner of holding elections for Senators in Congress."

July 11th, Mr. Fessenden, of Maine, moved an amendment to the bill, allowing every Legislature to settle the manner of voting, whether *viva voce* or by ballot. In the debate that ensued, Mr. Sumner said: —

MR. PRESIDENT, — I was impressed by a remark of the Senator from Illinois [Mr. TRUMBULL], to the effect, that, while regulating the election of Senators, it would be well to require uniformity in all respects. I was impressed by the remark, for it seemed to me a key to this whole question. If it be of importance to require uniformity in all respects, then it seems to me we should not fail to prescribe in all respects the manner of the election. Nothing should be left uncertain. This, I understand, the bill before us undertakes to do. The amendment of the Senator from Maine, if adopted, would leave the manner of election in one important particular open to the caprice of each Legisla-

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ture, so that one Legislature might act in one way and another in another way, — one might choose Senators by open vote, and another by secret vote.

Now, Sir, I remark, in the first place, that there should be uniformity. The question, then, is, Which system shall be adopted, — open voting, or secret voting? While I am entirely satisfied that at popular elections secret voting is preferable, and that every citizen, when about to vote at any such election, has a right to the protection of secrecy, I do not see my way to the same conclusion with regard to votes in a representative capacity. Such votes do not belong to the individual, if I may so express myself, but to his constituents. A sound policy requires that the constituent should be able to see the vote given by the representative; but that can be only where it is open. This argument seems to me unanswerable in principle.

Reference has been made to the English system; and I am glad to adduce it for example, not in the election of members of Parliament, but in elections by Parliament itself, as in the choice of Speaker. According to the principle I have already stated, elections for members of Parliament should enjoy the protection of secrecy, which they do not, while the representative in Parliament should be held to vote in such a way that his constituents may know what he does, and this is the English rule. The Speaker of the House of Commons is chosen by open voting, or *viva voce*.

MR. FESSENDEN. We do not do it here in the election of a President of the Senate.

MR. SUMNER. But I am disposed to believe that in not doing it we fail to follow the best example. There

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is no question now with regard to the manner of voting at popular elections. Our present question concerns the manner of voting in a representative capacity, and here British precedent is in favor of open voting.

The rule at popular elections in our own country has not been uniform. In some States open voting has prevailed from the beginning; in others, voting has been by ballot. The origin of these differences, while curious historically, is not without interest in this debate. I think I do not err in saying that the example of England was early recognized in Virginia and the more southern States, also in New York after the withdrawal of Holland. The Western States, including Kentucky, I need not remind the Senate, were carved out of Virginia. The great Northwest Territory was originally part of Virginia, and I presume that the habit which the Senator from Illinois tells us prevails throughout that region was derived originally from Virginia, as the latter State derived it originally from England. In New England the usage is otherwise; nor is it difficult to trace its origin. New England borrowed her system of secret voting at popular elections from the Puritan corporation which originally planted its settlements. By the Law of Corporations a majority governs, and this rule was practically enforced by secret voting. Here the simplicity of the times harmonized with classical example. Beans were used for ballots. A candidate being named, the elector voted by dropping a black bean or white bean into a box. The rule at popular elections was carried into elections by the Legislature. These early settlers were not the first to employ beans for ballots. The law of Athens enjoined that their magistrates should be chosen by a ballot of

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beans: so we are told by Lucian, in his Dialogues.[1] In other places voting was by black and white pebbles.[2] These instances, besides showing a curious parallel with our New England way, illustrate the history of secret voting.

This brief statement shows the origin of the opposite rules in popular elections among us, — the South and West receiving theirs from Virginia and from England, and New England receiving hers from the practice of a Puritan corporation. I ought to mention that Rhode Island, which was organized under a charter from Charles the Second, was an exception; but in other States the original rule of secrecy in popular elections has prevailed from the beginning.

There is no question before us with regard to popular elections. We are considering how men should vote in a representative capacity. Much as I am in favor of secret voting at the polls, I cannot hesitate in declaring for open voting wherever men represent others. Nor can I see any reason for secrecy in elections by a legislative body which is not equally strong for secrecy in voting on the passage of laws. But nobody would dispense with the ayes and noes in our daily business. To my mind the question is clear. Republican institutions will gain by establishing the accountability of the representative, and I cannot doubt that this principle should be our guide in determining the manner of electing Senators under the National Constitution.

[1] The Sale of Philosophers: Works, tr. Francklin, (London, 1781,) Vol. I. p. 412.

[2] "Mos erat antiquus, niveis atrisque lapillis,
His damnare reos, illis absolvere culpâ."
OVID, *Metam.*, Lib. XV. 41, 42.

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The amendment of Mr. Fessenden was rejected, — Yeas 6, Nays 28.

The bill passed the Senate, — Yeas 25, Nays 11, — also the House of Representatives, and was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. pp. 243, 244.

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MAIL SERVICE BETWEEN THE UNITED STATES AND THE SANDWICH ISLANDS.

SPEECH IN THE SENATE, ON A JOINT RESOLUTION RELEASING THE PACIFIC MAIL STEAMSHIPS FROM STOPPING AT THE SANDWICH ISLANDS ON THEIR ROUTE TO JAPAN AND CHINA, JULY 17, 1866.

THE Senate having under consideration a joint resolution releasing the Pacific Mail Steamship Company from the portion of their contract requiring them to stop at the Sandwich Islands on their route to Japan and China, Mr. Wilson, of Massachusetts, moved to require, as a condition of release, the establishment of a monthly mail steamship line between San Francisco and the Sandwich Islands.

Mr. Sumner said: —

MR. PRESIDENT, — This question is not free from embarrassment, especially where one is in favor of the line to Japan, and also in favor of a line to the Sandwich Islands, as is the case with myself. I am anxious to see each of these lines established, believing each important to the general welfare, and especially to the commercial interests of the country. But, strong as is my desire, I am not able to see how the line to Japan can be advantageously held to turn aside and stop at the Sandwich Islands. To bring these two objects into one voyage is not unlike the idea of the elderly person who wished her Bible to be the smallest size book and the largest size type. The two things do not go together.

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And yet, Sir, I confess that my interest in the Sandwich Islands inclines me to do all that I can to strengthen and increase our relations with them. I do not forget that these islands, though originally discovered by a British navigator, are mainly indebted for their present civilization to the United States. Missionaries of our country have planted churches and schools at an expense of at least a million dollars. One of our countrymen, the late John Pickering, of Boston, the eminent philologist and scholar, invented the alphabet by which the native language was reduced to a written text. The whalers of New England have made these islands a resting-place. Our ships on their way to China have made them a half-way house. Of all the foreign ships which reach there five sixths are of our country. Such are the ties of beneficence and of commerce by which we are bound to these islands. No other nation there has an interest comparable in character or amount to ours. Meanwhile the native population is constantly decaying, so that I presume now it is not more than fifty thousand.

This brief review furnishes a glimpse of our interest in these islands. They are the wards of the United States. We cannot turn away from them. The Government must add its contribution also. On this account I have heard with pleasure that a national ship, under the command of one of our most intelligent officers, is to be stationed at the Sandwich Islands. Her presence will exercise a salutary influence in sustaining the interests of our people. This is something. But I confess that I should like to see these islands bound to our continent by a steam line.

While declaring this desire, with my reasons for it,

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I am not satisfied that it is proper to require the Japan line to perform this service. It is clear, from unanswerable testimony, that the stoppage of this line cannot be effected without such a deviation as materially to interfere with its operations.

The testimony presented by the report is positive. Here, for instance, is what is said by that eminent authority, Admiral Davis: —

"These considerations with regard to the eastern voyage appear to dispose of the whole question. They show that touching at the Sandwich Islands, on the return from China, would prolong the voyage so many days unnecessarily that an additional line of steamers must soon be established, provided the intercourse between China and America is to acquire that importance which is confidently expected."

This concerns the voyage from Japan to San Francisco. But Admiral Davis is also against stopping at the islands on the outward voyage.

It seems clear, then, that the Japanese line, in order to be effective, and to accomplish what is so much desired, must be left to itself, without being obliged to turn aside for any incidental purpose. It must be a Japanese line, and nothing else; and you must not forget, that, just in proportion as you impose upon it any additional obligations, you will impair its efficiency as one of the splendid links of commerce destined to put a girdle round the globe.

I am ready, therefore, to release the Japanese line from stopping at the Sandwich Islands; but at the same time I declare my hope that some other means will be found to secure a line to these islands.

In releasing the Company from this service, I am

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willing to leave to them the full subsidy already appropriated; but I think they should be held to shorten their voyage in proportion to the time gained. This provision will remove an objection which has been made.

The joint resolution, as amended, passed the Senate, — Yeas 24, Nays 15, — but it was not considered in the House of Representatives. At the next session a bill became a law, authorizing the establishment of ocean mail steamship service between the United States and the Hawaiian Islands.[1]

[1] Statutes at Large, Vol. XIV. pp. 343, 344.

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TENNESSEE NOT SUFFICIENTLY RECONSTRUCTED.

SPEECH IN THE SENATE, ON A JOINT RESOLUTION DECLARING TENNESSEE AGAIN ENTITLED TO SENATORS AND REPRESENTATIVES IN CONGRESS, JULY 21, 1866.

THE Senate considered a joint resolution from the House of Representatives "declaring Tennessee again entitled to Senators and Representatives in Congress," for which a substitute was reported by Mr. Trumbull, of Illinois, from the Judiciary Committee. The joint resolution from the House and the proposed substitute each had a preamble. In the debate, Mr. Sumner said: —

MR. PRESIDENT, — The question, as I understand it, is between two preambles. I agree with my friend from Illinois, that the preamble reported by him in many respects has the advantage of that from the House. It is fuller, and in its structure better. I am glad it sets forth how Tennessee lost her representation here, and also how she may again be rehabilitated. But, while according merit to the Senator's preamble in that respect, there are other particulars in which it fails. He himself has already recognized that it is no better than that of the House, when it sets forth that

"the body of the people of Tennessee have, by a proper spirit of obedience, shown to the satisfaction of Congress the return of said State to due allegiance to the Government, laws, and authority of the United States."

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Here the two preambles are alike; there is no advantage in one over the other. But I understand the Senator is willing to alter this clause. If he consents to the alteration, and the alteration is made, then in this respect his preamble will be superior to that of the House. Clearly, Sir, the assumption is false; "the body of the people of Tennessee have" not, "by a proper spirit of obedience, shown to the satisfaction of Congress the return of said State to due allegiance to the Government, laws, and authority of the United States." I may go too far, when I say it is false that Tennessee has shown a proper spirit, to the satisfaction of Congress, — because, if Congress votes that, it will not be for me, or for any one else, to say it has voted a falsehood; but I do say Tennessee has not shown a proper spirit of obedience in the body of her people. All the evidence which thickens in the air from that State, and has been darkening our sky during all this winter, shows that Tennessee has not that spirit of obedience in the body of her people. Why, Sir, only this winter, the other House has been constrained to send a commission to Tennessee to investigate an outrage of unparalleled atrocity growing out of this very rebel spirit. How can the Senate aver that the body of that people, thus saturated with the spirit of disloyalty, thus set on fire and inflamed by this hatred to the Union, have shown to the satisfaction of Congress a proper spirit of obedience? Sir, you err, if you put in your statute-book any such assertion, which is historically untrue. You cannot make it true by your averment. History hereafter, when it takes up its avenging pen, will record the falsehood to your shame.

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Mr. Sumner then adduced evidence of the actual spirit in Tennessee, when he was interrupted by Mr. Grimes, of Iowa, who referred to the testimony of generals and civilians. Mr. Sumner continued:—

That does not go to the question whether we can aver that there is a proper spirit of obedience in the body of her people. No general says there is a proper spirit of obedience in the body of her people. I challenge the Senator to cite the testimony showing a proper spirit of obedience in the body of her people. Generals testify that in their opinion it would be better to admit representatives from Tennessee on this floor and the floor of the other House. That is another question. Logically, it is not before me yet. I am now speaking of the erroneous character of this preamble. But I understand that the Senator from Illinois is willing to alter his preamble. I believe I am right, — am I not?

MR. TRUMBULL. Yes, Sir; I am willing those words should go out.

MR. SUMNER. They ought to go out; and if they do go out, it will make his preamble in this respect superior to that from the House.

But there is another allegation in the Senator's preamble, which I must say is as erroneous as that on which I have remarked. He there declares, and calls upon us to declare, that the constitution adopted by Tennessee is republican in form. A constitution which disfranchises more than one quarter of its population republican in form! What, Sir, is a republican form of government? It is a government founded on the people and the consent of the governed. Sir, the constitution of Tennessee is not founded on the consent

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of the governed. It cannot invoke in its behalf that great principle of the Declaration of Independence; therefore it is not republican in form. And when you allege that it is republican in form, permit me to say, you make an allegation false in fact. I do not raise any question of theory, but I submit that a constitution which on its face disfranchises more than one fourth of the citizens cannot be republican in form. You, Sir, will make a terrible mistake, if at this moment of your history you undertake to recognize it as such. You will inflict a blow upon republican institutions. I hope the Senator from Illinois, as he has consented to one amendment, will consent to another, and will strike out the words declaring this constitution republican in form and in harmony with the Constitution of the United States. Do not compel us to aver what history will look at with scorn. Who can doubt, when this war is considered gravely and calmly in the tranquillity of the future, that the historian must bring all these events to the rigid test of principle? Bringing them to such test, it will be impossible to recognize any government like that of Tennessee either as republican in form or in harmony with the National Constitution.

Mr. Trumbull then moved to strike out the first clause objected to, and insert instead, "and has done other acts proclaiming and denoting loyalty," which was agreed to. Mr. Sumner then moved to strike out the words "republican in form and not inconsistent with the Constitution and laws of the United States," which was also agreed to.

Mr. Sumner then moved his proviso, already moved in the Louisiana bill and the Colorado bill,[1] that the Act should not take effect "except upon the fundamental condition that within the State there shall be no denial of the electoral franchise, or of any other rights, on account of race or color, but all persons shall be equal before the law."

[1] *Ante*, Vol. IX. p. 317; Vol. X. p. 352.

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This was lost, — Yeas 4, Nays 34. The four affirmative votes were, Mr. Gratz Brown, of Missouri, Mr. Pomeroy, of Kansas, Mr. Wade, of Ohio, and Mr. Sumner.

The bill passed the Senate, — Yeas 28, Nays 4, — and was approved by the President.[1] The four negative votes were, Mr. Gratz Brown, of Missouri, Mr. Buckalew, of Pennsylvania, Mr. McDougall, of California, and Mr. Sumner. Its preamble had been amended according to Mr. Sumner's desire, but he was not ready to receive Representatives and Senators from Tennessee except on the fundamental condition moved by him.

[1] Statutes at Large, Vol. XIV. p. 364.

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THE SENATE CHAMBER: ITS VENTILATION AND SIZE.

SPEECH IN THE SENATE, ON AN AMENDMENT TO THE CIVIL APPROPRIATION BILL, JULY 23, 1866.

ON motion of Mr. Buckalew, of Pennsylvania, a committee was appointed to consider the ventilation and sanitary condition of the Senate wing of the Capitol; and the committee made an elaborate report.

July 23d, while the Senate had under consideration the bill making appropriations for sundry civil expenses of the Government, this Senator moved an amendment appropriating $117,685.25 for improvements approved and recommended in the report. In the debate that ensued, Mr. Sumner said: —

MR. PRESIDENT, — The Senator from Pennsylvania has entitled himself to the gratitude of all his brethren for the attention he has bestowed upon an uninviting subject, which concerns the comfort of the Senate, — I was about to say, the character of our legislation; for, while breathing this anomalous atmosphere, legislation itself must too often suffer with our bodies. But he will pardon me, if I suggest that he is not sufficiently radical in his proposition. I am aware that he is unwilling to be thought radical. The name is not pleasant to him.

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MR. BUCKALEW. I have no distaste for the name. I claim to be very radical on some subjects.

MR. SUMNER. Very well. I hope he will be radical now, — in other words, that he will be thorough in his remedy for the present case.

Catching a phrase from ancient Rome, the Senator says that the roof over our heads must be destroyed, as if it were another Carthage. To my mind, this is not enough; the walls by which we are shut in must be destroyed. Our present difficulty is less with the roof than with the surrounding inclosure, separating us entirely from the open air and the light of day. Windows are natural ventilators; but we have none. Let this chamber be brought to the open air and the light of day, and Nature will do the rest. From its commanding position on a beautiful eminence, where every breeze can reach it, the Capitol will have an invigorating supply from every quarter. I doubt if any public edifice in the world can compare in site with that enjoyed by it, — and I do not forget the monumental structures of London, Paris, Vienna, or Rome. But in entering this stone cage with glass above, we renounce the advantages and opportunities of this unparalleled situation.

I would have all this massive masonry about us taken down, and the chamber brought to the windows. This change would make ventilation easy, and secure all that the Senator so anxiously recommends. It is more revolutionary than his plan. It will be expensive, very expensive, I fear; for the very completeness of the original work is an impediment to change. This Capitol, as we all see, is built for immortality. Its dis-

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advantages will not be less permanent than its advantages, unless we apply ourselves resolutely to their revision. Without legislation and positive effort on our part, this chamber will continue uncomfortable for generations and long centuries. Senators after us, in thickening ranks, will sit here as uncomfortable as ourselves. If not for ourselves, then for those who come after us, we should initiate a change.

Besides bringing this chamber to the windows, its proportions should be reduced, — I am disposed to say one half. A chamber of one half the size would answer every purpose of business, and not fail essentially even on occasions of display. Everything is now sacrificed to the galleries. Senators are treated as the gladiators of the ancient amphitheatre, not to make "a Roman holiday," but a Washington show. As many as fourteen or fifteen hundred people are constantly gathered in these galleries. But such surrounding multitudes are plainly inconsistent with the quiet transaction of business and the simple tone which belongs to legislation.

I am reminded of the testimony attributed to Sir Robert Peel, whose protracted parliamentary life made him an expert. Interrogated by the Committee of the House of Commons with regard to the proper size for the new chamber, he replied, that, though the House consisted of six hundred and fifty-eight members, yet that full number was rarely in attendance, so that on common occasions even a small house would not be filled, and in his judgment the chamber should be constructed with a view to the daily business rather than to the infrequent occasions when it would be crowded. His compendious conclusion was, that the House should

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be comfortable every day, at the risk of a tight squeeze now and then. The same idea had been expressed before by one of the best of early English writers, Thomas Fuller, who in his proverbs says: "A house had better be too little for a day than too great for a year":[1] houses ought to be proportioned to ordinary, and not extraordinary occasions. In these concurring sayings I find practical sense.

Plainly the Senate Chamber is too big for our daily life. It is not proportioned to ordinary occasions or every-day business. We all know that anything in a common tone of voice is heard with difficulty, unless we give special attention. Now I cannot doubt that the chamber should be so reduced that a motion or question or remark in a common tone of voice would be easily heard by every Senator. This should have been the rule for the architect at the beginning; and I would have it followed now in the change I suggest. With seven hundred listeners in the galleries, and with the large corps of reporters, the public would be in sufficient attendance, and the business of the country would be transacted more easily and advantageously.

Looking at these enormous spaces, adapted to the eye rather than to the ear, I turn with envy to that other chamber where the Senate sat so many honorable years, and listened to speeches which now belong to the permanent literature of the country. I doubt if any Senator who remembers that interesting chamber would not prefer it to this amphitheatre. For the transaction of daily business it was infinitely superior; and even on rare occasions, when the republic hung

[1] Holy State: Of Building.

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upon the voice of the orator, there were witnesses enough. The theory of our institutions was satisfied. The public was not excluded, and there were reporters to communicate promptly what was said.

The amendment was agreed to.

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A SHIP-CANAL THROUGH THE ISTHMUS OF DARIEN.

REMARKS IN THE SENATE, ON AN AMENDMENT TO THE CIVIL APPROPRIATION BILL, JULY 25, 1866.

JULY 25th, the Senate having under consideration the bill making appropriations for sundry civil expenses of the Government, Mr. Conness, of California, moved the following amendment: —

"To provide for a survey of the Isthmus of Darien, under the direction of the War Department, with a view to the construction of a ship-canal, in accordance with the report of the Superintendent of the Naval Observatory to the Navy Department, $40,000."

In the debate that ensued, Mr. Sumner remarked: —

I HAVE had the advantage of cursorily examining the able and interesting report on this work by Admiral Davis. It is learned and instructive, and develops the importance of such a canal to the commerce of the United States. I need not remind you that California is necessarily interested, because it is across the Isthmus of Darien that we reach the distant part of our own country. Therefore this is to increase and extend the facilities of communication with a part of our own country. Unhappily, we are obliged to go outside of our own borders, but I do not know that it becomes on that account any the less important.

The Senate will easily see not only its practical

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value, but also its grandeur in an historical aspect. From the time of Charles the Fifth, one of the aspirations of Spain, and indeed of all adventurers and navigators in those seas, has been to find what was often called "the secret of the strait," being a natural gate by which to pass from ocean to ocean. The proposition now is, not to find, but to make, a gate by which this object may be accomplished.

We may well be fascinated by the historic grandeur of the work; but I am more tempted by its practical value in promoting relations between distant parts of our own country and in helping the commerce of the world. But the pending proposition is simply to provide for surveys. There is no appropriation for the work. We do not bind ourselves in the future. Such an appropriation, whether regarded in a practical, scientific, or historic light, is amply commended. I shall gladly vote for it.

The amendment was agreed to, — Yeas 22, Nays 13.

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INQUIRY INTO THE TITLE OF A SENATOR TO HIS SEAT.

REMARKS IN THE SENATE, ON THE CREDENTIALS OF THE SENATOR FROM TENNESSEE, JULY 26, 1866.

ON the presentation of the credentials of Hon. David T. Patterson as a Senator from Tennessee, Mr. Sumner moved their reference to the Committee on the Judiciary, with a view to inquiry whether he could take the oaths required by Act of Congress and the rule of the Senate.[1] In remarks on this motion, Mr. Sumner referred to the case of Mr. Stark, of Oregon.[2] Afterwards, in reply to Mr. Grimes, of Iowa, he said: —

. . . . . .

BUT, Sir, there was something that fell from the Senator from Iowa to which I would make a moment's reply. He imagines, that, if we make this reference, we shall establish a dangerous precedent; and he even goes so far as to imagine the possibility that he or his colleague, arriving from the patriotic State of Iowa, may find their credentials called in question. Sir, the Senator forgets for a moment the history of the country: he forgets that we have just emerged from a great civil war, — that the State of Tennessee took part in that war, — and that the very question now under consideration is, whether the gentleman presenting himself as a Senator was compromised by that war.

[1] *Ante*, Vol. VIII. pp. 53, seqq. [2] *Ante*, Vol. VI. pp. 846, seqq.

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If in the State of Iowa there should unhappily be a rebellion, and if public report should announce that our patriot friend had taken part in it to such an extent as to sit on the bench as a judge, enjoying its commission and swearing allegiance to it, then should he present himself with credentials as a Senator, I think we should be justified in asking an inquiry; and that is the extent of what I ask now. I take the case the Senator from Iowa supposes, but remind you of well-known facts which he omits; and there, permit me to say, is the whole question. If the case of Tennessee were an ordinary case, like that of Iowa, there would be no occasion and no justification for inquiry. But it is not an ordinary case; it is a case incident to the anomalous condition of public affairs at this moment. It cannot be treated according to the ordinary rule; it is a new case, and to meet it we must make a new precedent.

The Senator is much afraid of precedents. Sir, I am not afraid of any precedent having for its object the protection of right; and just in proportion as new circumstances arise must they be met by a new precedent. New circumstances have arisen, and you are called on to meet them frankly, simply.

The motion prevailed, — Yeas 20, Nays 14.

July 27th, the Committee reported that Mr. Patterson, "upon taking the oaths required by the Constitution and laws, be admitted to a seat in the Senate of the United States"; and this report was adopted, — Yeas 21, Nays 11, — Mr. Sumner voting in the negative.

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NO MORE STATES WITH THE WORD "WHITE" IN THE CONSTITUTION.

SPEECHES IN THE SENATE, ON THE ADMISSION OF NEBRASKA AS A STATE, JULY 27, DECEMBER 14 AND 19, 1866, AND JANUARY 8, 1867.

THE question of admitting Nebraska as a State followed that of Colorado, and with the same effort on the part of Mr. Sumner to require equal rights without distinction of color in the constitution of the new State. Nebraska, like Colorado, failed in this respect. Unquestionably, the discussion on these two cases prepared the way for the requirement of equal suffrage in the Rebel States.

July 27th, Mr. Wade, of Ohio, Chairman of the Committee on Territories, moved to proceed with the bill for the admission of the State of Nebraska into the Union, and urged its passage. Mr. Sumner followed.

MR. PRESIDENT, — I am very sorry to occupy the attention of the Senate even for one minute, but I shall be very brief. The Senator [Mr. WADE] tells us that the majority of the people in favor of the State government was about one hundred and fifty; and by such a slender, slim majority you are called to invest this Territory with the powers and prerogatives of a State. The smallness of the majority is an argument against any present action; but, going behind that small majority, and looking at the number of voters, the argument increases, for the Senator

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tells us there were but eight thousand voters. The question is, Will you invest those eight thousand voters with the powers and prerogatives now enjoyed in this Chamber by New York and Pennsylvania and other States of this Union? I think the objection on this account unanswerable. It would be unreasonable for you to invest them with those powers and prerogatives at this time.

But, Sir, I confess that with me the prevailing objection is, that the State does not present itself with a constitution republican in form, and on this question I challenge the deliberate judgment of my excellent friend, the Senator from Ohio, who is now trying to introduce this Territory into the Union as a State. I challenge the distinguished Senator to show that a constitution which disqualifies citizens on account of color can be republican in form. Sir, I say it is not a republican government, and I am sorry that my distinguished friend lends his countenance to a government of such a character. I wish that my friend would lift himself to the argument that such a government cannot be republican, and must not be welcomed as such on this floor.

I forbear entering into the argument. Again and again I have presented it. Senators have made up their minds. Each must judge for himself. It is not without pain and trouble that I find myself constrained to differ from valued friends and associates, with whom I am always proud to agree; but I cannot recognize a constitution with the word "white" as republican. With such conviction, it is my duty to oppose the welcome of this Territory as a State just so long as I can.

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Mr. Wade said in reply: "It is republican in form, but is not that kind of republicanism that I approve of. If I had my way about it, nobody would be excluded from the franchise that was a male citizen of proper age, let his color be what it would. That would be the color of republicanism that I should like the best. But to deny that under the Constitution of the United States this constitution is republican in form is to deny that we have a republic at all. . . . . The State of Massachusetts is a little forward on this subject. I am glad of it."

Mr. Hendricks, of Indiana, Mr. Doolittle, of Wisconsin, Mr. Pomeroy, of Kansas, Mr. Howard, of Michigan, Mr. Garrett Davis, of Kentucky, Mr. Kirkwood, of Iowa, Mr. Buckalew, of Pennsylvania, Mr. Yates, of Illinois, Mr. Nye, of Nevada, and Mr. Edmunds, of Vermont, took part in the debate. In the course of Mr. Nye's remarks, the following occurred.

MR. NYE. But my conscientious friend from Massachusetts, I am terribly afraid, mistakes twinges of dyspepsia for constitutional scruples. [*Laughter.*]

MR. SUMNER. I never had the dyspepsia in my life.

MR. NYE. I am glad to hear it; it is some other disease, then. [*Laughter.*] This word "white" is the nightmare of his mind.

Mr. Wade, speaking again, said: "The Senator from Massachusetts has a certain one idea that covers the whole ground. . . . . All the opposition that he really has to it is because they put the word 'white' in their constitution."

Mr. Sumner moved the proviso already moved on the Louisiana and Colorado bills, requiring as a fundamental condition that within the State there should be no denial of the elective franchise or of any other right on account of race or color, and that this condition should be ratified by the voters of the Territory; which was lost, — Yeas 5, Nays 34. The Senators voting yea were Mr. Edmunds, of Vermont, Mr. Fessenden, of Maine, Mr. Morgan, of New York, Mr. Poland, of Vermont, and Mr. Sumner.

The bill then passed the Senate, — Yeas 24, Nays 18. It also passed the House of Representatives, but did not receive the signature of the President.

At the next session of Congress, Mr. Wade introduced another bill for the admission of Nebraska, which he afterwards reported from the Committee on Territories. Notwithstanding its constitution with the word "white," December 14th, he moved to proceed with the consideration of this bill. Mr. Sumner was against taking it up.

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. . . . . .

I HOPE you do not forget the great act of yesterday. By solemn vote, you have recorded yourselves in favor of Human Rights, and have established them here at the National Capital. And now, Sir, you are asked to set aside Human Rights, and to forget the triumph and example of yesterday. Before you is a constitution with the word "white," — a constitution creating a white man's government, such as is praised by Senators on the other side, — and you are asked to recognize that disreputable instrument. I am against any such government, and I trust the Senate will not proceed with its consideration.

Do not to-day undo the good work of yesterday, nor imitate that ancient personage who unwove at night the web woven during the day, so that her work never proceeded to any end. Do not, I entreat you, unweave to-day the beautiful web of yesterday.

Instead of undoing, let us do always; nor is there any lack of measures deserving attention. There is the Bankrupt Bill, practical and beneficent in character, and involving no sacrifice of Human Rights. This is a measure of real humanity, calculated to carry tranquillity and repose into the business of the country. Besides, it has been too long postponed.

Mr. Wade replied with some warmth, when the following passage occurred.

MR. SUMNER. Mr. President, I hope to be pardoned, if I make one word of reply to the Senator. He seemed to think his argument advanced by personal allusions to myself. If I understand him, he sought to show inconsistency on my part.

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MR. WADE. Yes, I think I did.

MR. SUMNER. I am at a loss to understand how the Senator can find inconsistency, unless he chooses to misunderstand facts. He assumed that I voted for the admission of Tennessee.

MR. WADE. When you said you did not, I gave it up.

MR. SUMNER. My name is recorded, on all the yeas and nays, and they were numerous, against the admission of Tennessee; and the reason I assigned was, that the constitution contained the word "white."

MR. WADE. You voted for the Constitutional Amendment.

MR. SUMNER. Yes, I did vote for the Constitutional Amendment, in its final form;[1] but does the Senator consider himself bound to admit a Rebel State refusing the suffrage to freedmen? I wish my friend to answer that.

MR. WADE. No, I do not.

MR. SUMNER. I knew he did not.

MR. WADE. I do not know that I understand the Senator. Let me say that I should consider myself bound by the Constitutional Amendment, if the Southern States complied with it within a reasonable time; and that reasonable time, in my judgment, is nearly elapsed.

MR. SUMNER. Even with the word "white" in a constitution?

MR. WADE. Without regard to that.

MR. SUMNER. Without regard to the rights of the freedman?

MR. WADE. On complying with the requisitions of the Constitutional Amendment, I should vote for them.

[1] The Fourteenth Amendment.

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MR. SUMNER. I do not agree with the Senator. I distinctly stated, when the Amendment was under discussion, that I did not accept it as a finality, and that, so far as I had a vote on this floor, I would insist that every one of these States, before its Representatives were received in Congress, should confer impartial suffrage, without distinction of color; and now I ask my friend what inconsistency there is, when I insist upon the same rule for Nebraska.

MR. WADE. I cannot see how the Senator could have misled the Southern States with that. When they complied with all we asked of them in the Constitutional Amendment, I supposed we could not refuse to let them in on those terms. . . . . Certainly I am as much for colored suffrage as any man on this floor; but when I make such an agreement as that, I stand by it always.

MR. SUMNER. When I make an agreement, I stand by it. But I entered into no such agreement, and I do not understand that the Senate or Congress entered into any such agreement. I know that certain politicians and editors have undertaken to foist something of this sort into the Constitutional Amendment; but there was no authority for it. The Committee on Reconstruction may have reported a resolution to that effect, but they never called it up, and I know well that I offered a resolution just the contrary.

MR. DOOLITTLE. The Senator from Massachusetts will allow me?

MR. SUMNER. Certainly.

MR. DOOLITTLE. The Committee on Reconstruction reported a resolution, that, if each State should adopt this Amendment, and the Amendment should become a part

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of the Constitution, be adopted by a sufficient number of States, then the States might be accepted. That was what they reported.

MR. JOHNSON. It was a bill.

MR. WADE. That was the understanding I alluded to.

MR. BROWN. That was not acted upon.

MR. SUMNER. It was not acted on. I suppose that those who had it in charge did not venture to invite a vote upon it.

MR. DOOLITTLE. It was laid on the table by a vote in the House of Representatives, upon the yeas and nays.

MR. SUMNER. It never became in any respect a legislative act; therefore nobody entered legislatively into the agreement attributed to me. How the Senator could attribute it to me, in the face of constant asseveration that I would not be a party to any such agreement, surpasses comprehension.

. . . . . .

So far as the Senator considered the merits of the question, I will not now reply. There may be a time for that, and the magnitude of the issue may justify me even in setting forth arguments already adduced. If I repeat myself, it is because you repeat an effort which ought never to have been made. But I enter my most earnest protest. To my mind this is a most disastrous measure. I use this word advisedly; it is disastrous because it cannot fail to impair the moral efficiency of Congress, injure its influence, and be something like a bar to the adoption of a just policy for the Rebel States. Sir, we are now seeking to obliterate the word "white" from all institutions and constitutions there; and yet Senators, with that great question before them, rush swiftly forward to welcome a new

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State with the word "white" in its constitution. In other days we all united, and the Senator from Ohio was earnest among the number, in saying, "No more Slave States!" I now insist upon another cry: "No more States with the word 'white'!" On that question I part company with my friend from Ohio. He is now about to welcome them.

The motion of Mr. Wade was adopted, — Yeas 21, Nays 11, — and the bill was before the Senate for consideration. Mr. Gratz Brown then offered the proviso, offered formerly by Mr. Sumner,[1] requiring, as a fundamental condition, that there should be no denial of the elective franchise or of any other right on account of race or color, and upon the further condition that this requirement be submitted to the voters of the Territory. In the earnest debate that ensued, Mr. Sumner spoke repeatedly, especially in reply to Mr. Wade, setting forth again the objections already made to the admission of Colorado.

December 19th, Mr. Sumner said: —

I HAVE another word for the Senator from Ohio. He does not see the importance of this question. It is the question of every day, a commonplace question. There is the precise difference between the Senator from Ohio and other Senators. There have been times when the Senator has most clearly seen the importance of a question of Human Rights. The Senator has not forgotten a contest in which he took part with myself against an effort to precipitate Louisiana back into this Chamber with a constitution like that of Nebraska. Now the Senator remembers it well. The Senator from Illinois [Mr. TRUMBULL] tried to put that constitution through the Senate; but, with all his abilities and the just influence that belonged to his position, he could not do it. The Senator from Ohio will not be instructed by that example. He now makes a kin-

[1] *Ante*, p. 506.

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dred effort, seeking to introduce into the Union a State which defies the first principle of Human Rights. The Senator becomes the champion of that community. He who has so often raised his voice for Human Rights now treats the question as trivial: it is a technicality only; that is all.

Sir, can a question of Human Rights be a technicality? Can a constitution which undertakes to disfranchise a whole race be treated in that effort as only a technicality? And yet that is the position of the Senator. Why, Sir, the other day he did openly arraign the constitution of Louisiana, and the effort of our excellent President, Abraham Lincoln, who pressed it upon us. The constitution of Louisiana was odious; it should not have been presented to the Senate; and I doubt if there is any Senator on the right side who does not now rejoice that it was defeated.

Then followed a passage with Mr. Kirkwood, of Iowa, who volunteered to consider that Mr. Sumner had attacked the constitution of Iowa, when he had made no allusion to it.

MR. KIRKWOOD. He compares the case of the Territory of Nebraska to that of the lately rebellious States. I think there is a great difference between them. The people of the Territory of Nebraska are loyal men; the people of the late rebellious States are not loyal; and when he compares the one with the other, I think he does injustice to himself and to the people of that Territory.

MR. SUMNER. I made no such comparison.

MR. KIRKWOOD. He speaks of the constitution submitted by some persons in Louisiana as odious, as offensive, and compares the constitution of Nebraska and the constitution of that State, or proposed State, intending to convey the idea, I presume, that the constitution of Nebraska is odious and offensive. Now I wish to say to that Senator that the constitution of Nebraska and the constitution of Iowa in this particular are identical. Does he call the constitution of Iowa odious and offensive? .... The people of Iowa are as loyal as the people of Massachusetts are.

MR. SUMNER. No doubt about it. I never said otherwise.

MR. KIRKWOOD. But he said our constitution was offensive.

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MR. SUMNER. I made no allusion to the constitution of Iowa.

MR. KIRKWOOD. But you made an allusion to a constitution precisely similar in this identical point to that of Iowa. . . . . I repeat again, I cannot see the difference between characterizing the constitution of Iowa as odious and offensive and characterizing the constitution of another State that agrees with it precisely in terms in that way.

MR. SUMNER. May I ask the Senator if he considers that provision in the constitution of Iowa right or wrong?

MR. KIRKWOOD. I conceive it to be the business of the people of Iowa, and not the business of the Senator from Massachusetts. The people of Iowa will deal with it in their own way, when they see fit; and, as a loyal people, they have the right to do so; and so, I apprehend, have the people of Nebraska.

MR. SUMNER. The Senator from Iowa has not been in this body very long. Had he been here longer, he would have known that toward the people of Iowa, by vote and voice, I have always been true. One of my earliest efforts in this Chamber, now many years ago, was in protection of the interests of the people of Iowa. On that occasion, as the record shows, I received from the Senators of Iowa expressions of friendship and kindness which I cannot forget. I have never thought of that State except with kindness and respect. I have never alluded to that State except with kindness and respect. I have made no allusion to Iowa to-night. I have not had Iowa in my mind to-night. And, Sir, for one good reason: it is my habit, when I speak, so far as I am able, to speak directly to the question. Iowa has not been before us; her constitution has not been under discussion; therefore I have had no occasion to express any opinion upon it.

But there is another constitution which has been before us, and on which I have been asked to vote. On that constitution I express an opinion. I say it contains an odious and offensive principle; and I doubt

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if the Senator from Iowa would undertake to say that an exclusion from rights on account of color would be properly characterized otherwise than as odious and offensive. I did not know that the constitution of Iowa was open to that objection, or at least it was not in my mind, when I spoke; but I do know that the constitution of Nebraska is open to that objection, and therefore I pronounce it odious and offensive. It contains a disfranchisement of men on account of color, and it is a little difficult to speak of that without losing a little patience. It is difficult at this time, when we have such great responsibilities with regard to the States lately in rebellion, to look upon a candidate State like that of Nebraska, coming forward with a constitution containing this principle of disfranchisement, without the strongest disposition to use language which I do not want to use, — language of the utmost condemnation. Such a constitution at this moment from a new State does not deserve any quarter. Such a constitution ought to be a hissing and a by-word; and I am at a loss to understand how any Senator, at this time, not entirely insensible to our great responsibilities with regard to the States lately in rebellion, can look upon a new constitution like this except as a hissing and a by-word. Sir, it is a shame to the people that bring it here; and it will be a shame to Congress, if it gives it its sanction. I use that language purposely, and I stand by it, even at the expense of the criticism of the Senator from Iowa.

But, in saying this, I intend no reflection upon Iowa. That State is not before us. Iowa is not a new State, or Territory rather, applying for admission; nor is it, thank God, a rebel State; but it is a true loyal State,

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which in other days, some years ago, in haste and under sinister influence, introduced words into its constitution which the Senator from that State now brings forward in this Chamber, not for condemnation, but from his tone I should suppose for praise. Sir, he should rather follow another example, and throw a cover over that part of the constitution of his State which is unworthy the civilization of our times.

I am sorry to have been led into these remarks. I was astonished that the Senator should compel me to make them. When I go back to the earlier days, I think that perhaps I might have expected other things from a Senator of Iowa.

And now, Sir, I come again to the question which in the opinion of the Senator from Ohio is so trivial, — nothing more than a question of *assumpsit*.

MR. WADE. A common count in *assumpsit*.

MR. SUMNER. A common count.

. . . . .

January 8th, after the holidays, the question was resumed, when Mr. Sumner said: —

. . . . .

BUT, Sir, the course of the Senate on this bill fills me with anxiety. Since the unhappy perversity of the President, nothing has occurred which seems to me of such evil omen. It passes my comprehension how we can require Equal Rights in the Rebel States, when we deliberately sanction the denial of Equal Rights in a new State, completely within our jurisdiction and about to be fashioned by our hands. Others may commit this inconsistency; I will not. Others may make the sacrifice; I cannot.

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It seems as if Providence presented this occasion in order to give you an easy opportunity of asserting a principle infinitely valuable to the whole country. Only a few persons are directly interested; but the decision of Congress now will determine a governing rule for millions. Nebraska is a loyal community, small in numbers, formed out of ourselves, bone of our bone and flesh of our flesh. In an evil hour it adopted a constitution bad in itself and worse still as an example. But neither the tie of blood nor the fellowship of party should be permitted to save it from judgment. At this moment Congress cannot afford to sanction such wrong. Congress must elevate itself, if it would elevate the country. It must itself be the example of justice, if it would make justice the universal rule. It must itself be the model it recommends. It must begin Reconstruction here at home.

With pain I differ from valued friends around me, and see a line of duty which they do not see. Such is my deference to them, that, if the question were less clear or less important, I should abandon my own conclusions and accept theirs. But when the question is so plain and duty so imperative, I have no alternative.

Let me add, that, in taking the course I do, I have nothing but friendly feelings for the Territory of Nebraska, or for the men she has sent to represent her in the Senate. I wish to see Nebraska populous and flourishing, and the home of Human Rights secured by irrevocable law; and as for her Senators, I know them now so well that I shall have peculiar pleasure in welcoming them on this floor. But there are voices from Nebraska which I wish you to hear.

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Here Mr. Sumner read letters against the admission of Nebraska with her present constitution, and then proceeded.

In looking at this question, we are met at the threshold by the fact that in a vote of nearly eight thousand there was a majority of only one hundred in favor of this disreputable constitution.[1] At the call of less than four thousand voters, you are to recognize a State government which begins its independent life by defiance of fundamental truths. I am at a loss to understand the grounds on which this can be done, unless, in anxiety to gratify the desires of a few persons and to welcome the excellent gentlemen from Nebraska, you are willing to set aside great principles of duty at a critical moment of national history. It is pleasant to be "amiable"; but you have no right to be amiable at the expense of Human Rights. It is pleasant to be "lenient," as the Senator [Mr. WADE] who is urging this bill expresses it; but take care, that, in lenity to this Territory, you are not unjust. There can be no such thing as "lenity" where Human Rights are in question.

The other Senator from Ohio [Mr. SHERMAN] does not leave room for discretion. He says we are bound by the Enabling Act passed some time ago. Assume that the Senator is right, and that the Enabling Act creates an obligation on the part of Congress, — all of which I deny, — I insist that there has been no compliance with this Act, either in form or substance.

Looking at the Enabling Act, we find that it has not been complied with in form. This can be placed beyond question. By this Act it is provided that a "Con-

[1] Total vote, 7776: for the constitution, 3938; against, 3838: majority, 100. — *Congressional Globe*, 39th Cong. 2d Sess., pp. 126, 852.

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vention" of the people of Nebraska shall be chosen by the people, that the election for such "Convention" shall be held on "the first Monday in June thereafter," and that "the members of the Convention thus elected shall meet at the capital of said Territory on the first Monday in July next." Now, in point of fact, such Convention was duly chosen, and it met, according to the provisions of the Enabling Act. Thus far all was right. But, after meeting, it voluntarily adjourned or dissolved, without framing a constitution. Afterward the Territorial Legislature undertook to do what the Convention failed to do. The Territorial Legislature adopted a constitution, and submitted it to the people; and this is the constitution before you. Plainly there has been no compliance with the Enabling Act, so far as it prescribes the proceedings for the formation of a constitution. Nothing can be clearer than this. The Act prescribes a Convention at a particular date. Instead of a Convention at the date prescribed, we have the Legislature acting at a different date; so that there is an open non-compliance with the prescribed conditions. It is vain, therefore, to adduce it. As well refer to Homer's Iliad or the Book of Job.

But the failure in substance is graver still. By the Enabling Act it is further provided "that the constitution, when formed, shall be republican, and not repugnant to the Constitution of the United States and the principles of the Declaration of Independence." Here are essential conditions which must be complied with. The constitution must be "republican." Now I insist always that a constitution which denies Equality of Rights cannot be republican. It may be republican according to the imperfect notions of an earlier period,

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or even according to the standard of Montesquieu; but it cannot be republican in a country which began its national life in disregard of received notions and the standards of the past. In fixing for the first time an authoritative definition of this requirement, you cannot forget the new vows to Human Rights uttered by our fathers, nor can you forget that our republic is an example to mankind. This is an occasion not to be lost of acting not only for the present in time and place, but for the distant also.

But there is another consideration, if possible, more decisive. I say nothing now of the requirement that the new constitution shall be "not repugnant to the Constitution of the United States," but I call attention to the positive condition that it must be "not repugnant to the principles of the Declaration of Independence." And yet, Sir, in the face of this plain requirement, we have a new constitution which disfranchises for color, and establishes what is compendiously called "a white man's government." This new constitution sets at nought the great principles that all men are equal and that governments stand on the consent of the governed. Therefore, I say confidently, it is not according to "the principles of the Declaration of Independence." Is this doubted? Can it be doubted? You must raze living words, you must kill undying truths, before you can announce any such conformity. As long as those words exist, as long as those truths shine forth in that Declaration, you must condemn this new constitution. I remember gratefully the electric power with which the Senator from Ohio [Mr. WADE], not many years ago, confronting the representatives of Slavery, bravely vindicated these principles as "self-

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evident truths." "There was a Brutus once that would have brooked the eternal Devil" as easily as any denial of these. Would that he would speak now as then, and insist on their practical application everywhere within the power of Congress, and thus set up a wall of defence for the downtrodden!

Thus the question stands. The Enabling Act has not been complied with in any respect, whether of form or substance. In form it has been openly disregarded; in substance it has been insulted. The failure in form may be pardoned; the failure in substance must be fatal, unless in some way corrected by Congress.

Nobody doubts that Congress, in providing for the formation of a State constitution, may affix conditions. This has been done from the beginning of our history. Search the Enabling Acts, and you will find these conditions. They are in your statute-book, constant witnesses to the power of Congress, unquestioned and unquestionable.

Thus, for instance, the Enabling Act for Nebraska requires three things of the new State as conditions precedent.

First. That Slavery shall be forever prohibited.

Secondly. That no inhabitant shall be molested in person or property on account of religious worship.

Thirdly. That the unappropriated public lands shall remain at the sole disposition of the United States, without being subject to local taxation, and that land of non-residents shall never be taxed higher than that of residents.

Read the Act, and you will find these conditions. Does any Senator doubt their validity? Impossible.

But this is not all. In addition to these three con-

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ditions are three others, which in order, if not in importance, stand even before these. They are contained in words already quoted, but strangely forgotten in this debate: —

"That the constitution, when formed, shall be republican, and not repugnant to the Constitution of the United States and the principles of the Declaration of Independence."

Consider this clause: you will find it contains three conditions, each of vital force.

First. The constitution must be "republican." It does not say "in form" merely, but "republican": of course "republican" in substance and reality.

Secondly. The constitution must be "not repugnant to the Constitution of the United States." But surely any constitution which contains a discrimination of rights on account of color must be "repugnant" to the Constitution of the United States, which contains no such discrimination. The text of the National Constitution is blameless; but the text of this new constitution is offensive. Hence its repugnancy.

Thirdly. The constitution must be "not repugnant to the principles of the Declaration of Independence." These plain words allow no equivocation. Solemnly you have required this just and noble conformity. But is it not an insult to the understanding, when you offer a constitution which contains a discrimination of rights on account of color?

Now in all these three requirements, so authoritatively made the conditions of the new constitution, Nebraska fails, wretchedly fails. It is vain to say that the people there were not warned. They were warned. These requirements were in the very title-deed under which they claim.

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Mr. President, pardon me, I entreat you, if I am tenacious. At this moment there is one vast question in our country, on which all others pivot. It is justice to the colored race. Without this I see small chance of security, tranquillity, or even of peace. The war will still continue. Therefore, as a servant of truth and a lover of my country, I cannot allow this cause to be sacrificed or discredited by my vote. Others will do as they please; but, if I stand alone, I will hold this bridge.

The persistence of Mr. Sumner was encountered by Mr. Wade, who said: —

"I think it is the business of the statesman to overlook these little small technicalities which gentlemen argue about in this body. They make a great fuss about the word 'white' in a constitution of a State where there are no blacks, — where the question is a simple abstraction."

Mr. Cowan, of Pennsylvania, dealt with the question of Equality, but with pleasantry.

"My honorable friend, the Senator from Massachusetts, is six feet three inches in height, and weighs two hundred and twenty pounds; I am six feet three inches in height, and weigh one hundred and ninety pounds, if you please. That is not equality. My honorable friend from Maine here is five feet nine inches" ——

Mr. Fessenden. And a half. [*Laughter.*]

Mr. Cowan. I beg the honorable Senator's pardon. I would not diminish his stature an inch or half an inch, nor take a hair from his head; and he weighs one hundred and forty pounds, if you please. Is that equality? The honorable Senator from Massachusetts is largely learned; he has traversed the whole field of human learning; there is nothing, I think, that he does not know, that is worth knowing, — and this is no empty compliment that I desire to pay him now; and he is so much wiser than I am, that at the last elections he divined exactly how they would result, and I did not. [*Laughter.*] He rode triumphantly upon the popular wave; and I was overwhelmed, and came out with eyes and nose suffused, and hardly able to gasp.

Mr. Sumner. You ought to have followed my counsel.

Mr. Cowan. Why should I not? What was Providence doing in that? If Providence had made me equal to the honorable Senator, I should not have needed his counsel, and I should have ridden, too, on the topmost wave. [*Laughter.*]

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January 9th, the amendment of Mr. Gratz Brown was rejected, — Yeas 8, Nays 24. The Senators voting in the affirmative were Mr. Cowan, of Pennsylvania, Mr. Edmunds, of Vermont, Mr. Fessenden, of Maine, Mr. Grimes, of Iowa, Mr. Howe, of Wisconsin, Mr. Morgan, of New York, Mr. Poland, of Vermont, and Mr. Sumner.

Mr. Edmunds then moved the following amendment: —

"That this act shall take effect with the fundamental and perpetual condition that within said State of Nebraska there shall be no abridgment or denial of the exercise of the elective franchise or of any other right to any person by reason of race or color, excepting Indians not taxed."

It will be observed that this differs from Mr. Sumner's in not requiring the submission of the fundamental condition to the voters of the Territory. This amendment was lost by a tie-vote, — Yeas 18, Nays 18. At the next stage of the bill, being again moved by Mr. Edmunds, it was adopted, — Yeas 20, Nays 18. The bill was then passed by the Senate, — Yeas 24, Nays 15.

In the other House, the proviso adopted by the Senate was changed, on motion of Mr. Boutwell, of Massachusetts, so as to require that the Legislature of the State should by a solemn public act declare consent to the fundamental condition, and the bill was then passed, — Yeas 103, Nays 55. In this amendment the Senate concurred.

February 8th, the bill was again passed in the Senate, by a two-thirds vote, over the veto of the President, — Yeas 31, Nays 9; and February 9th, in the other House, by a two-thirds vote, — Yeas 120, Nays 44. And so the bill became a law.[1] Colorado was less fortunate.[2]

Thus the protracted struggle for Equal Rights in Nebraska, establishing a fundamental condition, was crowned with success, preparing the way for similar requirement in the Rebel States.

[1] Statutes at Large, Vol. XIV. p. 391. [2] *Ante*, p. 374.

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THE METRIC SYSTEM OF WEIGHTS AND MEASURES.

SPEECH IN THE SENATE, ON TWO BILLS AND A JOINT RESOLUTION RELATING TO THE METRIC SYSTEM, JULY 27, 1866.

MAY 18th, Mr. Sumner moved the appointment by the Chair of a special committee of five, to which all bills and measures relating to the metric system should be referred; and the motion was agreed to.

May 23d, the Chair appointed Mr. Sumner, Mr. Sherman, of Ohio, Mr. Morgan, of New York, Mr. Nesmith, of Oregon, and Mr. Guthrie, of Kentucky. Two bills and a joint resolution which had passed the House of Representatives were referred to the committee, and July 16th reported to the Senate by Mr. Sumner, with the recommendation that they pass, namely: —

"A Bill to authorize the use of the metric system of weights and measures."

"A Joint Resolution to enable the Secretary of the Treasury to furnish to each State one set of the standard weights and measures of the metric system."

"A Bill to authorize the use in post-offices of weights of the denomination of grams."

July 27th, on motion of Mr. Sumner, these were taken up and passed.

MR. PRESIDENT, — At another time I might be induced to go into this question at some length; but now, in these latter days of a weary session, and under these heats, I feel that I must be brief. And yet I could not pardon myself, if I did not undertake,

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even at this time, to present a plain and simple account of the great change which is now proposed.

There is something captivating in the idea of weights and measures common to all the civilized world, so that, in this at least, the confusion of Babel may be overcome. Kindred is that other idea of one money; and both are forerunners, perhaps, of the grander idea of one language for all the civilized world. Philosophy does not despair of this triumph at some distant day; but a common system of weights and measures and a common system of money are already within the sphere of actual legislation. The work has already begun; and it cannot cease until the great object is accomplished.

If the United States come tardily into the circle of nations recognizing a common system of weights and measures, I confess that I have pleasure in recalling the historic fact that at a very early day this important subject was commended to Congress. Washington, in a speech to the First Congress, touched the key-note, when he used the word "uniformity" in connection with this subject. "Uniformity," he said, "in the currency, weights, and measures of the United States is an object of great importance, and will, I am persuaded, be duly attended to."[1] Then again in a speech to the next Congress he went further, in expressing a desire for "a standard at once *invariable and universal*."[2] Here he foreshadowed a system common to the civilized world. It is for us now to recognize the standard he thus sententiously described. All hail to a standard "invariable and universal"!

I shall not occupy time in developing the history

[1] Annals of Congress, 1st Cong. 2d Sess., col. 933, January 8, 1790.
[2] Ibid., 2d Cong. 1st Sess., col. 15, October 25, 1791.

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of these efforts on the part of our Government; but I cannot forbear mentioning that Mr. Jefferson, while Secretary of State, made an elaborate report, where he proposed "reducing every branch to the same decimal ratio already established in the coins, and thus bringing the calculation of the principal affairs of life within the arithmetic of every man who can multiply and divide plain numbers."[1] Here is an essential element in the common system we seek to establish. This was in 1790, when France was just beginning those efforts which ended at last in the establishment of the metric system. The subject was revived at different times in Congress without definite result. President Madison, in his annual message of 1816, called attention to it in the following words:—

"The great utility of a standard *fixed in its nature and founded on the easy rule of decimal proportions* is sufficiently obvious. It led the Government at an early stage to preparatory steps for introducing it; and a completion of the work will be a just title to the public gratitude."[2]

Out of this recommendation originated that call of the Senate which drew forth the masterly report of John Quincy Adams on the whole subject of weights and measures, where learning, philosophy, and prophetic aspiration vie with each other. After reviewing whatever had appeared in the past, and subjecting it all to careful examination, he says of the French metric system, then only an experiment:—

"This system approaches to the ideal perfection of uniformity applied to weights and measures, and, whether des-

[1] Plan for establishing Uniformity in the Coinage, Weights, and Measures of the United States, July 13, 1790: Writings, Vol. VII. p. 488.

[2] Annals of Congress, 14th Cong. 2d Sess., col. 14, December 3, 1816.

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tined to succeed or doomed to fail, will shed unfading glory upon the age in which it was conceived and upon the nation by which its execution was attempted and has been in part achieved." [1]

This was in 1821, when the metric system, already invented, was still struggling for adoption in France.

This brief sketch shows how from the beginning the National Government has been looking to a system common to the civilized world. And now this aspiration seems about to be fulfilled. The bills before you have already passed the other House; if they become laws, as I trust, they will be the practical commencement of the "new order."

Before proceeding to explain the proposed system, let me exhibit for one moment the necessity of change, as illustrated by weights and measures in the past.

Language is coeval with man as a social being. Weights and measures are hardly less early in origin. They are essential to the operations of society, and are naturally common to all who belong to the same social circle. At the beginning, each people had a system of its own; but as nations gradually intermingle and distant places are brought together by the attractions of commerce, the system of one nation becomes inadequate to the necessities of the composite body. A common system becomes important just in proportion to the community of interests. Next to diversity of languages, discordant weights and measures attest the insulation of nations.

The earliest measures were derived from the several parts of the human body. Such was the cubit, which

[1] Report upon Weights and Measures, p. 48.

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was the distance between the elbow and the end of the middle finger, being about twenty-two inches. Such also were the foot, the hand, the span, the nail, and the thumb. These measures were derived from Nature, and they were to be found wherever a human being existed. But they partook of the uncertainty in the proportions of the human form. When Selden, in his "Table-Talk," wittily likened Equity, so far as it depended on the Chancellor, to a measure determined by the length of the Chancellor's foot, he exposed not only the uncertainty of Equity, but also the uncertainty of such a measure.

Even in Greece, where Art prevailed in the most beautiful forms, the famous *stadium* was none the less uncertain. It was the distance that Hercules could run without taking breath, being six hundred times the length of his foot.

Our own standards, derived from England, are of an equally fanciful character. The unit of *length* is the barley-corn, taken from the middle of the ear and well dried. Three of these in a straight line make an inch. The unit of *weight* is a grain of wheat, taken, like the barley-corn, from the middle of the ear and well dried. Of these, twenty-four are equal to a penny-weight. Twenty pennyweights make an ounce, and twelve ounces make a pound. The unit of *capacity* is derived from the weight of grains of wheat. Eight pounds of these make one gallon of wine measure.

Nor are the extreme vagueness and instability of these standards the only surprise. There is no principle of science or convenience in the progression of the different series. Thus we have two pints to a quart, three scruples to a dram, four quarts to a gallon,

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five quarters to an ell, five and a half yards to a perch, six feet to a fathom, eight furlongs to a mile, twelve inches to a foot, sixteen ounces to a pound, twenty units to a score.

Then, as if the only ruling principle governing the selection were discord, we have different measures bearing the same name, such as the wine pint and the dry pint, the ounce Troy and the ounce avoirdupois. Take these last two measures as illustrating the prevailing confusion. Both seem to come from France. The Troy weight is supposed to derive its name from the French town of Troyes, where a celebrated fair was once held. The term "avoirdupois" is French, and seems to have been part of a statute which declared how weights should be determined. But Troy and avoirdupois are different measures.

These measures, having constant differences, had accidental differences also, in different parts of England, and also in different parts of our own country. Even where the names are alike, the measures are often unlike. In England the diversity was almost infinite, so that these same measures differed in different counties, and sometimes in different towns of the same county. Latterly in the United States the standard has been regulated by law, but the confusion from the measures still continues. The question naturally arises, why such confusion has been allowed so long without correction. The answer is easy. Except in rare instances, the triumphs of science are slow and gradual. Traditional prejudice must be overcome. Each nation is attached to its own imperfect system, as to its own language. Even though inferior to another, it has the great advantage of being known to the people that use

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it. To this constant impediment it is proper to add the intrinsic difficulty of establishing a uniform system of weights and measures which shall satisfy the demands of civilization in scientific precision, in immediate practical applicability, and in nomenclature.

Take, for instance, the application of the decimal system, which seems at first sight simple and complete. It is unquestionably an immense improvement on the old confusion; but even here we encounter a difficulty in the circumstance, long since recognized by mathematicians, that our scale of decimal arithmetic is more the child of chance than of philosophy. I know not if any better reason can be given for its adoption than because man has everywhere reckoned by his ten fingers. On this account it is often called "natural." But, considering whether the number *ten* possesses any intrinsic excellence, convenience, or fitness, as a ratio of progression, good authorities have answered in the negative. It is the duplication of an odd number, which can furnish neither a square nor a cube, and which cannot be halved without departure from the decimal scale. In this scale we seem to see always those early days when "wild in woods the noble savage ran," and for arithmetic used fingers or toes. An *octaval* system, founded on the number eight, would have been better adapted to the divisions of material things. Among us the decimal system is adopted for money; but you all know that we are not able to carry it into rigid practice. Thus convenience, if not necessity, requires the half-dollar, the quarter-dollar, the half-dime, and the three-cent piece. In fact, eight divisions to the dollar, as prevailed in Spain, are more available in the business of life than the decimal division. The

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number *eight* is capable of indefinite bisection. The progression beginning with two would proceed to four, eight, sixteen, thirty-two, sixty-four, and so on.

The decimal scale is made easy of use by the happy system of notation borrowed from the Hindoos, which might be applied equally well to an octaval scale; but at this time it would be vain to propose a change in the radix of the numerical scale. The number *ten* is the recognized starting-point, and gives its name to the scale. It only remains for us at present to follow other nations in applying it to an improved system of weights and measures.

A system of weights and measures born of philosophy, rather than of chance, is what we now seek. To this end old systems must be abandoned. A chance system cannot be universal: science is universal; therefore what is produced by science may find a home everywhere. If we consider the proper elements or characteristics of such a system, we find at least three essential conditions. First, the new system must have in itself the assurance of unvarying stability, and, to this end, it should be derived from some standard in Nature by which to correct errors creeping into the weights and measures from time or imperfect manufacture. Secondly, the parts should be divided decimally, as nearly as practice will warrant, in conformity with our arithmetic. Thirdly, it should be such as to disturb national prejudices as little as possible.

To a common observer the difficulties of finding an unvarying standard are not readily apparent. But philosophy shows that all things in Nature are undergoing change; so that there would seem to be no invariable

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magnitude, the same in all countries and in all times, as Cicero pictured the great principles of Natural Law,[1] by which a lost standard on an inaccessible island might be reproduced with mathematical certainty. There is but one magnitude in Nature which, so far as we know, approximates to these requisites. I refer to the length of the pendulum vibrating seconds, which in our latitude is about 39.1 inches. This length, however, varies in travelling from the equator to the pole, and it also varies slightly under different meridians and the same latitude; but the law of variation has been determined with considerable accuracy. One element in this variation is the difference of temperature. In his report on weights and measures, Mr. Jefferson proposed that we should find our standard in the pendulum. At the same time, the French Government, just struggling to throw off ancestral institutions, conceived the idea of a new system, which, founded in science, should be common to the civilized world.

The French began not only by discarding old systems, but also by discarding a measure derived from the pendulum. They conceived the idea of measuring an arc of the earth's meridian, and finding a new unit in a subdivision of this immense span. The work was undertaken. An arc of the meridian, embracing upward of nine degrees of latitude, and extending from Dunkirk, in France, to the Mediterranean, near Barcelona, in Spain, was measured with scientific care. Illustrious names in French science, Méchain and Delambre, were engaged in the work, which proceeded, notwithstanding domestic convulsion and foreign war. The Reign of Terror at home and invasion from abroad did

[1] See, *ante*, p. 895, note.

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not arrest it. Seven years elapsed before the measurements were completed, when other nations were invited to coöperate in the establishment of the new system.

The unit of measure was one ten-millionth part of the distance between the equator and the north pole thus measured. It received the name of *metre*, from the Greek, signifying *measure*. A bar of platinum, representing this length, was prepared with all possible accuracy. This bar was deposited in the archives of France as the perpetual standard. Other bars have been copied from it and distributed throughout France and in foreign countries.

There is something transcendental in the idea of this measurement of the earth in order to find a measure for daily life. It was an immense undertaking. But the conception seems to have been vast rather than practical. There is reason to believe, from later labors, that there was a serious error in the work. Thus, the distance of 10,000,000 metres from the equator to the north pole, established by the French observers, is too small by 935 yards, according to Bessel, — by 1,410 yards, according to Puissant, — and by 1,967 yards, according to Chazallon. Sir John Herschell also testifies with the authority of his great name against the accuracy of this result. If there be an error such as is supposed, then the metre ceases to be what it was called originally, one ten-millionth part of the distance from the equator to the north pole.

Even assuming that there is no error, and that the metre is precisely what it purports to be, yet it is not easy to see how the artificial standard can be corrected by recurrence to the standard in Nature. The massive work originally undertaken will not be repeated. The

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astronomers of France will not verify the accuracy of the bar of platinum, which is the artificial standard, by another scientific enterprise, requiring years for completion. Therefore, for all practical purposes, the metre is really nothing else than a bar of platinum with a certain length preserved in the archives of France. It is not less arbitrary as a standard than the yard or foot, and it can be perpetuated in practice only by distribution of exact copies from the original bar, which is the assumed metre.

I have thus explained the origin and character of the metre, because I desire that the admirable system founded on it should be seen actually as it is. To my mind, it gains nothing from the theory which presided at its origin. Its unit is not to be regarded as a certain portion of the distance between the equator and the north pole, but as an artificial measure determined with peculiar care. Had the same or any other unit been selected without measurement of the earth, the metric system would not have been less beautiful or perfect.

Look now at the system. The metre, which is assumed to be one ten-millionth part of the distance from the equator to the pole, is, in fact, 39⅜ inches, or 39.37 inches, in length. It is especially the unit of *length;* but it is also the unit from which are derived all measures of weight and capacity, square or cubic. It is at once foundation-stone and cap-stone. It is foundation-stone to all in the ascending series, and cap-stone to all in the descending series.

The unit of *surface measure,* or land measure, is the *are,* from the Latin *area,* and is the square of ten me-

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tres, or, in other words, a square of which each side is ten metres in length.

The unit of *solid measure* is the *stere*, from the Greek, and is the cube of a metre, or, in other words, a solid mass one metre long, one metre broad, and one metre high.

The unit of *liquid measure* is the *litre*, from the Greek, and is the cube of the tenth part of the metre, which is the *decimetre;* or, in other words, it is a vessel where by interior measurement each side and the bottom are square *decimetres.*

The unit of *weight* is the *gram*, also derived from the Greek, and is the one-thousandth part of the weight of a cubic litre of distilled water at its greatest density, — this being just above the freezing-point.

Such are main elements of the metric system. But each of these has multiples and subdivisions. It is multiplied decimally upward, and divided decimally downward. The multiples are from the Greek. Thus, *deca*, ten, *hecto*, hundred, *kilo*, thousand, and *myria*, ten thousand, prefixed to *metre*, signify ten metres, one hundred metres, one thousand metres, and ten thousand metres. The subdivisions are from the Latin. Thus, *deci*, *centi*, *milli*, prefixed to *metre*, signify one tenth, one hundredth, and one thousandth of a metre. All this appears in the following table.

Metric Denominations and Values	Equivalents in Denominations in use.
Myriametre, 10,000 metres,	6.2137 miles.
Kilometre, 1,000 metres,	.62137 mile, or 3,280 feet and 10 inches.
Hectometre, 100 metres,	328 feet and 1 inch.
Decametre, 10 metres,	393.7 inches.
METRE, 1 metre,	39.37 inches.
Decimetre, $\frac{1}{10}$ of a metre,	3.937 inches.
Centimetre, $\frac{1}{100}$ of a metre,	.3937 inch.
Millimetre, $\frac{1}{1000}$ of a metre,	.0394 inch.

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These same prefixes may be applied in ascending and descending scales to the are, the litre, and the gram. Thus, for example, we have in the ascending scale, *deca*gram, *hecto*gram, *kilo*gram, and *myria*gram, — and in the descending scale, *deci*gram, *centi*gram, *milli*gram.

In this brief space you behold the whole metric system of weights and measures. What a contrast to the anterior confusion! A boy at school can master the metric system in an afternoon. Months, if not years, are required to store away the perplexities, incongruities, and inconsistencies of the existing weights and measures, and then memory must often fail in reproducing them. The mystery of compound arithmetic is essential in the calculations they require. All this is done away by the decimal progression, so that the first four rules of arithmetic are ample for the pupil.

Looking closely at the metric system, we must confess its simplicity and symmetry. Like every creation of science, it is according to rule. Master the rule and you master the system. On this account it may be acquired by the young with comparative facility, and, when once acquired, it may be used with despatch. Thus it becomes labor-saving and time-saving. Among its merits I cannot hesitate to mention the nomenclature. A superficial criticism has objected to the Greek and Latin prefixes; but this forgets that a system intended for universal adoption must discard all local or national terms. The prefixes employed are equally intelligible in all countries. They are no more French than English or German. They are common, or cosmopolitan, and in all countries they are equally suggestive in disclosing the denomination of the measure. They combine the peculiar advantages of a universal

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name and a definition. The name instantly suggests the measure with exquisite precision. If these words seem scholastic or pedantic, you must bear this for the sake of their universality and defining power.

Unquestionably it is difficult for one generation to substitute a new system for that learned in childhood. Even in France the metric system was tardily adopted. Napoleon himself, on one occasion, said impatiently to an engineer who answered his inquiry in metres, "What are metres? Tell me in *toises*." It was only in 1840 that the system was definitely required in the transaction of business. Since then it has been the legal system of France. Cloth is sold by the metre; roads are measured by the kilometre; meat is sold by the kilogram, or, as it is familiarly abridged, by so many *kilos*.

It is generally admitted that the names are too long, although nobody has been able to suggest substitutes, unless we regard the various abridgments in that light. But no abridgment should be allowed to sacrifice the cosmopolitan character which belongs to the system. Thus, in England a nomenclature is proposed which would secure short names; but these would be different in each language, and entirely different from the French names. This is a mistake. The names in all languages should be identical, or so nearly alike as to be recognized at once. This may be accomplished by an abbreviated nomenclature.

For instance, we may say *met*, *ar*, *lit*, and *gram*; and, in describing the denomination, we may say, in the ascending scale, *dec*, *hec*, *kil*, and in the descending scale, *dec*, *cen*, and *mil*,— indicating respectively 10, 100, 1000, and $\frac{1}{10}$, $\frac{1}{100}$, and $\frac{1}{1000}$. Compounding these, we

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should have, for example, *kilmet, killit, kilgram,* and *cenmet, cenlit, cengram.* These abbreviations might be substantially the same in all languages. They would preserve the characteristics of the unabridged terms, so that the simple mention of the measure, even in this abridged form, would disclose the proportion it bears to its fellow-measures. Previous measures have been represented by monosyllables, as grain, dram, gross, ounce, pound, stone, ton. Where a word is often repeated, in the hurry of business, it is instinctively abridged. We shall not err, if we profit by this experience, and seek to reduce the new nomenclature to its smallest proportions.

Twelve words only are required by this system. Learning these, you learn all. There are five designating the different units of length, surface, solid capacity, liquid capacity, and weight. Then there are the seven prefixes, being four in the ascending scale, expressing *multiples,* or augmentations, of the metre or other units, derived from the Greek, and three in the descending scale, expressing subdivisions, or diminutions, of the metre and other units, derived from the Latin. These twelve words contain the whole system.

In closing this chapter on the unquestionable advantages of the metric system, I must not forget that it is already the received system in the majority of countries. At the Statistical Congress assembled at Berlin in 1863, it appeared that it was adopted partly or entirely in Austria, Baden, Bavaria, Belgium, France, Hamburg, Hanover, Hesse, Mecklenburg, the Netherlands, Parma, Portugal, Sardinia, Saxony, Spain, Switzerland, Tuscany, the Two Sicilies, and Würtemberg.

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Since then, Great Britain, by an Act of Parliament, has added her name to this list. The first step is taken there by making the metric system *permissive*, as is proposed in the bills before Congress. The example of Great Britain is of especial importance to us, since the commercial relations between the two countries render it essential that these should have a common system of weights and measures. On this point we cannot afford to differ from each other.

The adoption of the metric system by the United States will go far to complete the circle by which this great improvement will be assured to mankind. Here is a new agent of civilization, to be felt in all the concerns of life, at home and abroad. It will be hardly less important than the Arabic numerals, by which the operations of arithmetic are rendered common to all nations. It will help undo the primeval confusion of which the Tower of Babel was the representative.

As the first practical step to this great end, I ask the Senate to sanction the bills which have already passed the other House, and which I have reported from the special committee on the metric system. By these enactments the metric system will be presented to the American people, and will become an approved instrument of commerce. It will not be forced into use, but will be left for the present to its own intrinsic merits. Meanwhile it must be taught in schools. Our arithmetics must explain it. They who have already passed a certain period of life may not adopt it; but the rising generation will embrace it, and ever afterwards number it among the choicest possessions of an advanced civilization.

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ART IN THE NATIONAL CAPITOL.

SPEECH IN THE SENATE, ON A JOINT RESOLUTION AUTHORIZING A CONTRACT WITH VINNIE REAM FOR A STATUE OF ABRAHAM LINCOLN, JULY 27, 1866.

JULY 27th, on the last evening of the session, while the galleries were thronged, Mr. Conness, of California, called for the consideration of the joint resolution, which had already passed the House of Representatives, "authorizing a contract with Vinnie Ream for a statue of Abraham Lincoln." The following incident then occurred.

MR. SUMNER. Before that is taken up, I wish, with the consent of the Senator, that I might be allowed to put a joint resolution on its passage.

MR. CONNESS. This will only occupy a moment.

MR. SUMNER. It will be debated.

MR. CONNESS. Not, if you do not debate it.

MR. SUMNER. It must be debated.

MR. CONNESS. Will you debate it?

MR. SUMNER. I shall debate it.

MR. CONNESS. Let the Senator debate it now. I shall not give way, in that case.

MR. SUMNER. I merely wish to put a joint resolution upon its passage that will take no time.

MR. CONNESS. That is asking too much.

Mr. Chandler, of Michigan, then asked Mr. Conness "to give way for a moment" to allow him to call up —— Here he was arrested by the answer, "I cannot give way to the Senator, after having refused another Senator." The joint resolution was then read: —

"*Resolved, &c.*, That the Secretary of the Interior be, and he hereby is, authorized and directed to contract with Miss Vinnie Ream for a life-size

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model and statue of the late President Abraham Lincoln, to be executed by her, at a price not exceeding $10,000, one half payable on completion of the model in plaster, and the remaining half on completion of the statue in marble to his acceptance."

Mr. Lane, of Indiana, then moved to proceed with the pension bills that had already passed the other House, and this motion, after debate, prevailed, — Yeas 19, Nays 18. The pension bills and other bills were then considered, when another effort was made for the joint resolution.

MR. WADE. I move to take up the joint resolution authorizing a contract with Vinnie Ream for a statue of Abraham Lincoln.

MR. SUMNER. I hope that will not be taken up.

SEVERAL SENATORS. Oh, let us vote.

MR. SUMNER. Senators say, "Oh, let us vote." The question is about giving away $10,000.

MR. CONNESS. Taking it up is not giving money away, I hope.

MR. SUMNER. The question is, I say, about giving away $10,000: that is the proposition involved in this joint resolution.

MR. CONNESS. For a statue.

MR. SUMNER. The Senator says, "For a statue": an impossible statue, I say, — one which cannot be made. However, I say nothing on the merits now; that will come at another time, if the resolution is taken up. I ask for the yeas and nays on the question of taking up.

The question, being taken by yeas and nays, resulted, Yeas 26, Nays 8. So the motion was agreed to, and the Senate, as in committee of the whole, resumed the consideration of the joint resolution. Mr. Sumner said: —

SOME evenings ago, Sir, I attempted to secure an appropriation of $10,000 for worthy public servants in one of the Departments of the Government. In presenting that case, it was my duty to exhibit something of their necessities. I showed you how the money was needed by them to meet the expenses of living, which, as we all know, are constantly increasing, while the value of money is decreasing. I showed you also that they were entitled to this allowance by the

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service they had performed. After ample discussion, extended through several evenings, the Senate refused outright to appropriate $10,000 for distribution among public servants who, I insisted, had earned it by faithful labor. You acted on a sentiment of economy. It was urged, that, considering the numerous and heavy draughts upon the Treasury, we should not be justified in such allowance, and that, if it were made, then we should be obliged to make it in other cases, and there would be no end to the drain upon the Treasury. You all remember the fever of economy that broke out, and also the result. The proposition was voted down.

Now, Sir, a proposition is brought forward to appropriate that identical sum of $10,000 for a work of art. I speak of it in the most general way. If there were any assurance that the work in question could be worthy of so large a sum, if there were any reason to imagine that the favorite who is to be the beneficiary under this resolution were really competent to execute such a work, still, at this time and under the circumstances by which we are surrounded, I might well object to its passage, simply on reasons of economy. This argument is not out of place. I present, then, as my first objection, the consideration of economy. Do not, Sir, wastefully, inconsiderately, heedlessly give away so much. If you are in the mood of appropriation on this scale, select some of those public servants who have been discharging laborious duties on an inadequate compensation, and bestow it upon them. Be just before you are generous. Do this rather than become such sudden patrons of art. I hope that I do not treat the question too gravely.

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You treated the motion to augment compensation in the State Department very gravely. I but follow your example.

But, Sir, there is another aspect to which I allude, with your pardon. I enter upon it with great reluctance. I am unwilling to utter a word that would bear hard upon any one, least of all upon a youthful artist, where sex imposes reserve, if not on her part, at least on mine; but when a proposition like this is brought forward, I am bound to meet it frankly.

Each Senator will act on his own judgment and the evidence before him. Each will be responsible to his own conscience for the vote he gives. Now, Sir, with the little knowledge I have of such things, with the small opportunities I have enjoyed of observing works of art, and with the moderate acquaintance I have formed among artists, I am bound to express a confident opinion that this candidate is not competent to produce the work you propose to order. You might as well place her on the staff of General Grant, or, putting him aside, place her on horseback in his stead. She cannot do it. She might as well contract to furnish an epic poem, or the draft of a bankrupt bill. I am pained to be constrained into these remarks; but, when you press a vote, you leave me no alternative. Admit that she may make a statue; she cannot make one that you will be justified in placing here. Promise is not performance; but what she has done thus far comes under the former head rather than the latter. Surely this National Capitol, so beautiful and interesting, and already historic, should not be opened to the rude experiment of untried talent. Only the finished artist should be admitted here.

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Sir, I doubt if you consider enough the character of the edifice in which we are assembled. Possessing the advantage of an incomparable situation, it is among the first-class structures of the world. Surrounded by an amphitheatre of hills, with the Potomac at its feet, it may remind you of the Capitol in Rome, with the Alban and the Sabine hills in sight, and with the Tiber at its feet. But the situation is grander than that of the Roman Capitol. The edifice itself is not unworthy of the situation. It has beauty of form and sublimity in proportion, even if it lacks originality in conception. In itself it is a work of art. It should not receive in the way of ornamentation anything which is not a work of art. Unhappily, this rule is too often forgotten, or there would not be so few pictures and marbles about us which we are glad to recognize. But bad pictures and ordinary marbles warn us against adding to their number.

Pardon me, if I call attention for one moment to the few works of art in the Capitol which we might care to preserve. Beginning with the Vice-President's room, which is nearest, we find an excellent and finished portrait of Washington, by Peale. This is much less known than the familiar portrait by Stuart, but it is well worthy to be cherished. I never enter that room without feeling its presence. Traversing the corridors, we find ourselves in the spacious rotunda, where are four pictures by Trumbull, truly historic in character, by which great scenes live again before us. These works have a merit of their own which will always justify the place they occupy. Mr. Randolph, with ignorant levity, once characterized that which represents the signing of the Declaration of Independence

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as a "shin-piece." He should have known that there is probably no picture, having so many portraits, less obnoxious to such a gibe. If these pictures do not belong to the highest art, they can never fail in interest for the patriot citizen, while the artist will not be indifferent to them. One other picture in the rotunda is not without merit: I refer to the Landing of the Pilgrims, by Weir, where there is a certain beauty of color and a religious sentiment: but this picture has always seemed to me exaggerated, rather than natural. Passing from the rotunda to the House of Representatives, we stand before a picture which, as a work of art, is perhaps the choicest of all in the Capitol. It is the portrait of Lafayette, by that consummate artist, who was one of the glories of France, Ary Scheffer. He sympathized with our institutions; and this portrait of the early friend of our country was a present from the artist to the people of the United States. Few who look at it, by the side of the Speaker's chair, are aware that it is the production of the rare genius which gave to mankind the Christus Consolator and the Francesca da Rimini.

Turning from painting to sculpture, we find further reason for caution. The lesson is taught especially by that work of the Italian Persico, on the steps of the Capitol, called by him Columbus, but called by others "a man rolling nine-pins," — for the attitude and the ball he holds suggest this game. Near to this is a remarkable group by Greenough, where the early settler is struggling with the savage; while opposite in the yard is the statue of Washington by the same artist, which has found little favor because it is nude, but which shows a mastery of art. There also

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are the works of Crawford, — the *alto-rilievo* which fills the pediment over the great door of the Senate Chamber, and the statue of Liberty which looks down from the top of the dome, — attesting a genius that must always command admiration. There are other statues, by a living artist. There are also the bronze doors by Rogers, on which he labored long and well. They belong to a class of which there are only a few specimens in the world, and I have sometimes thought they might vie with those famous doors at Florence, which Michel Angelo hailed as worthy to be the gates of Paradise. Our artist has pictured the whole life of Columbus in bronze, while portraits of contemporary princes, and of great authors who have illustrated the life of the great discoverer, add to the completeness of this artistic work.

Now, Sir, the chambers of the Capitol are to open again for the reception of a work of art. It is to be the statue of our martyred President. He deserves a statue, and it should be here in Washington. But you cannot expect to have, even of him, more than one statue here in Washington. Such a repetition or reduplication would be out of place. It would be too much. There is one statue of Washington. There is also a statue of Jefferson: I refer to the excellent statue in front of the Executive Mansion, by the French sculptor, David. There is also one statue of Jackson. It is now proposed to add a statue of Lincoln. I suppose you do not contemplate two statues, or three, but only one. Who now shall make that one, to find hospitality in the National Capitol? Surely, whoever undertakes the work must be of ripe genius, with ample knowledge of art, and of unques-

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tioned capacity, — the whole informed and inspired by a prevailing sympathy with the martyr and the cause for which he lived and died. Are you satisfied that this youthful candidate, without ripeness of genius or ample knowledge of art or unquestioned capacity, and not so situated as to feel the full inspiration of his life and character, should receive this remarkable trust? She has never made a statue. Shall she experiment on the historic dead, and place her attempt under this dome? I am unwilling. When the statue of that beloved President is set up here, where we shall look upon it daily, and gather from it courage and consolation, I wish it to be a work of art in truth and reality, with living features animated by living soul, so that we shall all hail it as the man immortal by his life, doubly immortal through art. Anything short of this, even if through your indulgence it finds a transient resting-place here, will be removed whenever a correct taste asserts its just prerogative.

Therefore, Sir, for the sake of economy, that you may not heedlessly lavish the national treasure, — for the sake of this Capitol, itself a work of art, that it may not have anything in the way of ornamentation which is not a work of art, — for the sake of the martyred President, whose statue should be by a finished artist, — and for the sake of art throughout the whole country, that we may not set a pernicious example, — I ask you to reject this resolution. When I speak for art generally, I open a tempting theme; but I forbear. Suffice it to say that art throughout the whole country must suffer, if Congress crowns with its patronage anything which is not truly artistic. By such patronage you will discourage where you ought to encourage.

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Mr. President, I make these remarks with sincere reluctance; I am distressed in making them; but such an appropriation, engineered so vigorously, and having in its support such a concerted strength, must be met plainly and directly. Do not condemn the frankness you compel. If you wish to bestow a charity or a gift, do it openly, without pretence of any patronage bestowed upon art, or pretence of homage to a deceased President. Bring forward your resolution appropriating $10,000 to this youthful candidate. This I can deal with. I can listen to your argument for charity, and I assure you that I shall never be insensible to it. But when you propose this large sum for a work of art in the National Capitol in memory of the illustrious dead, I am obliged to consider the character of the artist. I wish it were otherwise, but I cannot help it.

The remarks of Mr. Sumner were opposed by Mr. Nesmith, of Oregon, Mr. McDougall and Mr. Conness, of California, Mr. Yates and Mr. Trumbull, of Illinois, Mr. Wade, of Ohio, and Mr. Cowan, of Pennsylvania. In the course of the debate, Mr. Edmunds, of Vermont, moved an amendment, requiring, that, before the first instalment of $5,000 should be paid, the model should be to the "acceptance" of the Secretary of the Interior. On this motion Mr. Sumner spoke again.

I THINK this amendment had better be adopted. It is only a reasonable precaution. The Senator from Wisconsin [Mr. HOWE] alluded to a contract with Mr. Stone. He is a known sculptor, whose works are at the very doors of the Senate Chamber. The committee who employed him must have been perfectly aware of his character. When they entered into a contract with him, there was no element of chance; they knew what they were contracting for. But in the pres-

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ent case there is nothing but chance, if there be not the certainty of failure.

MR. CONNESS. How was it in the case of Mr. Powell?

MR. SUMNER. I am speaking of the present case. One at a time, if you please. The person that you propose to contract with notoriously has never made a statue. All who have the most moderate acquaintance with art know that it is one thing to make a bust and quite another to make a statue. One may make a bust and yet be entirely unable to make a statue, — just as one may write a poem in the corner of a newspaper and not be able to produce an epic. A statue is art in one of its highest forms. There have been very few artists competent to make a statue. There is as yet but one instance that I recall of a woman reasonably successful in such an undertaking. But the eminent and precocious person to whom I refer had shown a peculiar genius very early in life, had enjoyed the rarest opportunities of culture, and had vindicated her title as artist before she attempted this difficult task. Conversing, as I sometimes have, with sculptors, I remember how they always dwell upon the difficulty of such a work. It is no small labor to set a man on his legs, with proper drapery and accessories, in stone or in bronze. Not many have been able to do it, and all these had already experience in art. Now there is no such experience here. Notoriously this candidate is without it. There is no reason to suppose that she can succeed. Therefore the Senator from Vermont [Mr. EDMUNDS] is wise, when he proposes, that, before the nation pays $5,000 on account, it shall have some assurance that the work is

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not absolutely a failure. Voltaire was in the habit of exclaiming, in coarse Italian words, that "a woman cannot produce a tragedy." In the face of what has been accomplished by Miss Hosmer, I do not venture on the remark that a woman cannot produce a statue; but I am sure that in the present case you ought to take every reasonable precaution. Anything for this Capitol must be "above suspicion."

Sir, I did not intend, when I rose, to say anything except directly upon the motion of the Senator from Vermont; but, as I am on the floor, perhaps I may be pardoned, if I advert for one moment ——

MR. HOWE. Will the Senator allow me to ask him one question, for information?

MR. SUMNER. Certainly.

MR. HOWE. It is, whether he supposes that by the examination of a plaster model he could get any assurance that the work in marble would be satisfactory.

MR. SUMNER. Obviously; for the chief work of the artist is in the model. When this is done, the work is more than half done, — almost all done. What remains requires mechanical skill rather than genius. In Italy, where are accomplished workmen in marble, the artist leaves his model in their hands, contenting himself with a few finishing strokes of the chisel. Sometimes he does not touch the marble.

I was about to say, when interrupted, that I hoped to be pardoned, if I adverted for one moment to the onslaught made upon what I have said in this debate. I do not understand it. I do not know why Senators have given such rein to the passion for personality. I made no criticism on any Senator, and no allusion,

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even, to any Senator. I addressed myself directly to the question, and endeavored to treat it with all the reserve consistent with proper frankness. Senators, one after another, have attacked me personally. The Senator from Oregon [Mr. NESMITH] seemed to riot in the business. The Senator from California [Mr. CONNESS], from whom I had reason to expect something better, caught the spirit of the other Pacific Senator. Sir, there was nothing in what I said to justify such attack. But I will not proceed in the comments their speeches invite; I turn away. There was, however, one remark of the Senator from Oregon to which I will refer. He complained that I was unwilling to patronize native art, and that I dwelt on the productions of foreign artists to the disparagement of our own.

I am at a loss for the motive of this singular misrepresentation. Let the Senator quote a sentence or word which fell from me in disparagement of native art. He cannot. I know the art of my country too well, and think of it with too much of patriotic pride. I alluded to only one foreign artist, and he was that sympathetic and gifted Frenchman who has endowed the Capitol with the portrait of Lafayette. The other artists that I praised were all of my own country. There was Rembrandt Peale, of Philadelphia, to whom we are indebted for the portrait of Washington. There was Trumbull, the companion of Washington, and one of his military staff, who, quitting the toils of war, gave himself to painting, under the inspiration of West, himself an American, and produced works which I pronounced the chief treasure of the rotunda. There also was Greenough, the earliest American sculptor, and,

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until Story took the chisel, unquestionably the most accomplished of all in the list of American sculptors. He was a scholar, versed in the languages of antiquity and modern times, who studied the art he practised in the literature of every tongue. Of him I never fail to speak in praise. There also was Crawford, an American sculptor, born in New York, and my own intimate personal friend, whose early triumphs I witnessed and enjoyed. He was a true genius, versatile, fertile, bold. His short life was crowned by the honors of his profession, and he was hailed at home and abroad as a great sculptor. How can I speak of this friend of my early life except with admiration and love? I alluded also to Rogers, an American artist, from the West, — yes, Sir, from the West ——

MR. HOWARD. Who was educated in Michigan.

MR. SUMNER. Educated in Michigan, — who has given to his country and to art those bronze doors, which I did not hesitate to compare with the immortal doors of Ghiberti in the Baptistery of Florence. These, Sir, were the artists to whom I referred, and such was the spirit in which I spoke. How, then, can any Senator complain that I praised foreign artists at the expense of artists at home? The remark, permit me to say, is absolutely without foundation.

It is because I would not have the art of my own country suffer, and because I would have its honors follow merit, that I oppose the largess you offer. If you really wish to set up a statue of our martyred President, select an acknowledged sculptor of your own country. Do not go to a foreigner, and do not go to the unknown. There are sculptors born among us and

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already famous. Take one of them. There is Powers, an artist of rarest skill with the chisel, of exquisite finish, — perhaps with less variety and freshness than some other artists, perhaps with less originality, but having in himself many and peculiar characteristics as a remarkable artist. Summon him. He has been tried. Contracting with him, you know in advance that you will have a statue not entirely unworthy of the appropriation or of the place.

There is another sculptor of our country, whom I should name first of all, if I were to express freely my unbiased choice: I mean Story. He is the son of the great jurist, and began life with his father's mantle resting upon him. His works of jurisprudence are quoted daily in your courts. He is also a man of letters. His contributions to literature in prose and verse are in your libraries. To these he adds unquestioned fame as sculptor. In the great exhibitions of Europe his Cleopatra and his Saul have been recognized as equal in art to the best of our time, and in the opinion of many as better than the best. He brings to sculpture not only the genius of an artist, but scholarship, literature, study, and talent of every kind. Take him. Let his name be associated with the Capitol by a statue which I am sure will be the source of national pride and honor.

I might mention other sculptors of our country already known, and others giving assurance of fame. My friend who sits beside me, the distinguished Senator from New York [Mr. MORGAN], very properly reminds me of the sculptor who does so much honor to his own State. Palmer has a beautiful genius, which he has cultivated for many years with sedulous care.

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He has experience. The seal of success is upon his works. Let him make your statue. There is still another artist, whose home is New York, whom I would not forget: I refer to Brown, author of the equestrian statue of Washington in New York. Of all equestrian statues in our country this is the best, unless Crawford's statue at Richmond is its rival. It need not shrink from comparison with equestrian statues in the Old World. The talent that could seat the great chief so easily in that bronze saddle ought to find welcome in this Capitol. There are yet other sculptors; but I confine my enumeration to those who have done something more than promise excellence. And now you turn from this native talent, already famous, to offer a difficult and honorable duty to an untried person, whose friends can claim for her nothing more than the uncertain promise of such excellence in sculpture as is consistent with the condition of her sex. Sir, I will not say anything more.

The amendment of Mr. Edmunds was voted down, — Yeas 7, Nays 22, — and the joint resolution passed the Senate, — Yeas 23, Nays 9.[1]

It was understood that the fair artist had received promises of support from Senators in advance. The spirit of the debate on their part belongs to the history of the case. Mr. Nesmith, of Oregon, said: —

"Mr. President, if this was a mere matter of research, I should be very much inclined to defer to the judgment of the Senator from Massachusetts; but, as it is not, and as it requires no great learning, no particular devotion to reading, to discover what is an exact imitation of Nature, I claim that my judgment on such a subject is as good as his own. . . . . He objects to this young artist, — this young scion of the West, from the same land from which Lincoln came, — a young person who manifests intuitive genius, and who is able to copy the works of Nature without having perused the immense tomes and the grand volumes of which the Senator may boast, —

[1] Statutes at Large, Vol. XIV. p. 370.

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a person who was born and raised in the wilds of the West, and who is able to copy its great works."

And much more in a worse vein.

Mr. Conness, of California, adopted another style : —

"And my idea of the great Senator from Massachusetts (by which name I am very proud to call him, and which is so well deserved) is, that he is never so great as when he rises and speaks in behalf of generosity, of humanity, when he exhibits to us the intellect and the affections in that happy commingling that is the sweetest and the most beautiful rule of human life and action."

Mr. Yates, of Illinois, bore his testimony : —

"I almost feel that the Senator from Massachusetts is a barbarian [*laughter*] of the highest order, in attacking this young lady."

Mr. Cowan, of Pennsylvania, said : —

"I have the highest respect for the opinions of my friend from Massachusetts upon all classical subjects, and particularly upon those which relate to most of the fine arts; but in statuary I propose to follow the lead of my honorable friend from Ohio [Mr. WADE], who I think is infinitely superior." [*Laughter.*]

On the other hand, Mr. Howard, of Michigan, said : —

"I know, perhaps, as much of the ability of the young lady to whom it is proposed to give this job as most members of this body. I have met her frequently, as other members of this body have done; and surely she has shown no lack of that peculiar talent known commonly as 'lobbying,' in pressing forward her enterprise and bringing it to the attention of Senators."

The statue was made. Mr. Delano, Secretary of the Interior, in a communication addressed to the Vice-President, January 10, 1871, reports : "The statue in marble has been completed to my entire satisfaction, and I have this day instructed the architect of the Capitol to take charge of it."[1] The feelings of artists found expression in words of Hiram Powers, the eminent American sculptor, at Florence, which appeared in the New York *Evening Post* : —

"I suppose that you, as well as all other well-wishers for art in our country, have been mortified, if not really disgusted, at the success of the Vinnie Ream statue of our glorious old Lincoln. An additional five thou-

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 13.

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sand dollars paid for this caricature! ——— ——— was bad enough; but this last act of Congress, in favor of a female lobby member, who has no more talent for art than the carver of weeping-willows on tombstones, really fills the mind of the genuine student of art (who thinks that years of profound study of art as a science are necessary) with despair."

END OF VOLUME X.

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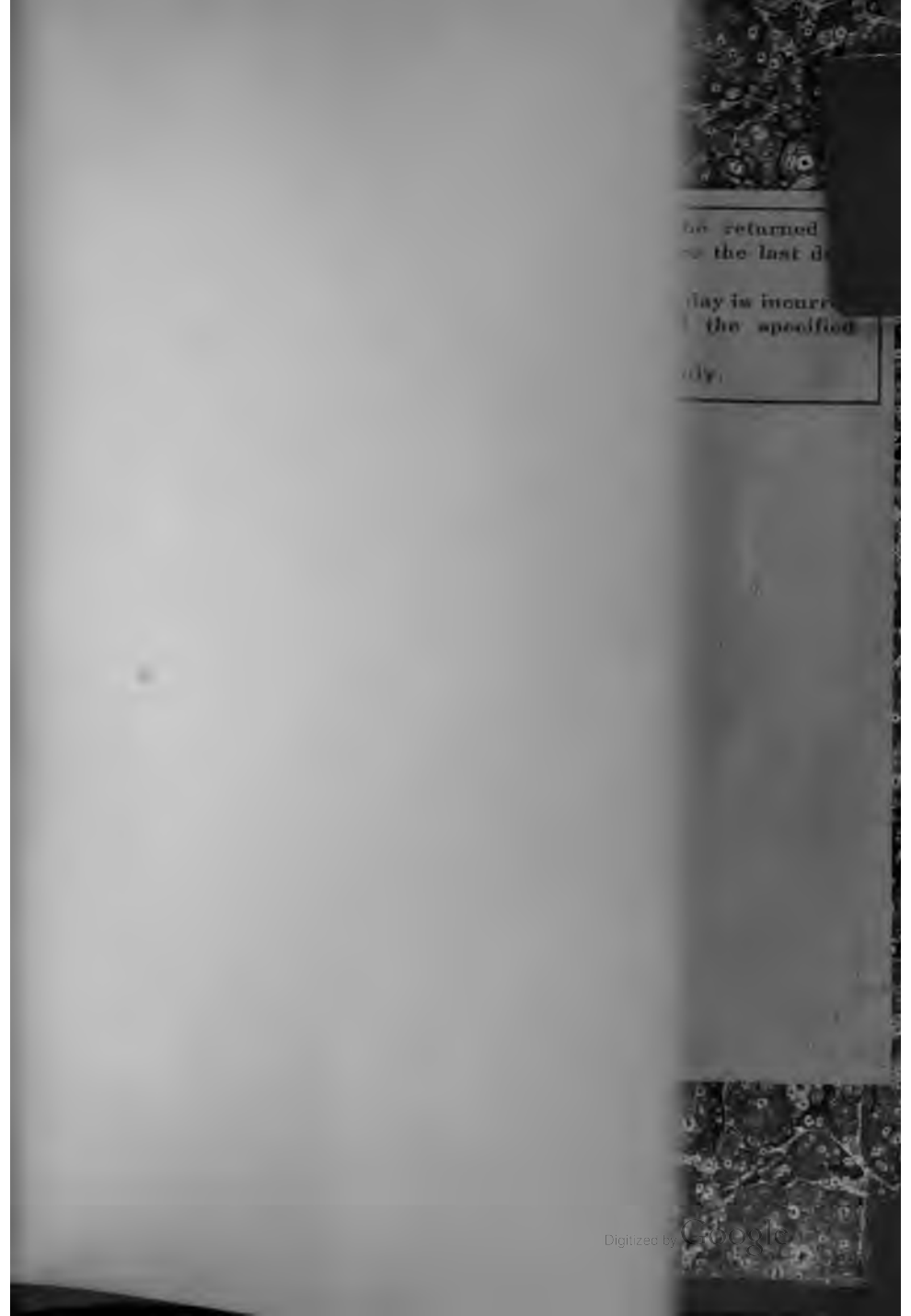

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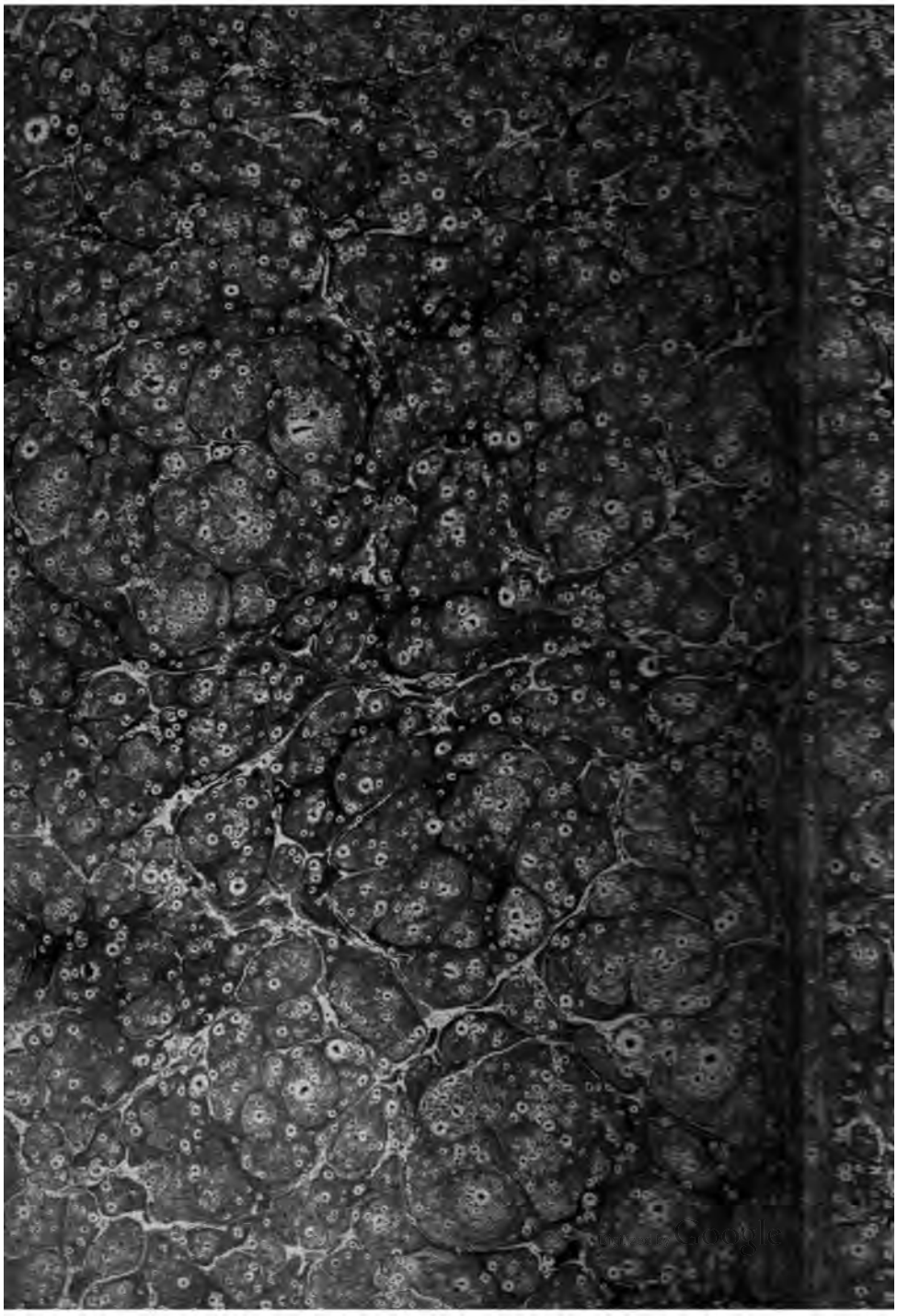

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